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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [redacted] 104

WILLIAM T. WOLSEY ET AL. AND THE STATE OF IOWA, APPELLANTS,

vs.

RICHARD B. CHAPMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED FEBRUARY 3, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 332.

WILLIAM T. WOLSEY ET AL. AND THE STATE OF IOWA, APPELLANTS,

vs.

RICHARD B. CHAPMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1-4 Pleas in the circuit court of the United States of America in and for the district of Iowa, at a term thereof begun and holden in the United States court room, in the city of Des Moines and district aforesaid, on the second Monday of May, the same being the eighth day of May, 1876, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for the district of Iowa.

5 Be it remembered that heretofore, to wit, on the 5th day of October, 1873, Richard B. Chapman, by his attorney, Theo. Hawley, filed in the clerk's office of the circuit court of the United States for the district of Iowa, a transcript of record from district court Webster County, wherein Richard B. Chapman was plaintiff and Wm. T. Woolsey et al. were defendants, which said transcript is in the words and figures following, to wit:

6 The following are the record entries had in the above-entitled cause, as shown by the records of this office, as follows, to wit:

In the district court, Webster County, Iowa.

R. B. CHAPMAN
vs.
WM. T. WOOLSEY. } No. 250. Eq.

This cause has been continued generally from the October term of said district court, A. D. 1868, to the September term, A. D. 1874.

Sept. term, A. D. 1874. Sept. 23.

R. B. CHAPMAN
vs.
WM. T. WOOLSEY AND OTHERS. } No. 250. Eq.

And now on this day comes the pl'ff, by his attorney, Theo. Hawley, and files a supplemental petition bringing in new parties. And thereupon Wm. R. Daniels, esq., is appointed guardian ad litem for the infant defendants. And thereupon comes the pl'ff and files a petition for a change of forum to the circuit court of the United States, and

7 also files a bond.

Oct. 2, 1874. Sept. term, 1874.

R. B. CHAPMAN
vs.
WM. T. WOOLSEY, MARY J. PIERCE, JOHN Woolsey, Ann Henry, George Woolsey, Lewis Woolsey, Fremont Woolsey, Clark Woolsey, Hopkins Woolsey, and Atta Woolsey. } No. 250. Eq.

And now on this second day of October, A. D. 1874, the same being the 11th day of September term of the district court of Webster County, Iowa, for 1874, this cause coming on to be heard upon the petition of the above-named plaintiff for the removal of this cause into the circuit court of the United States for the district of Iowa, in pur-

suance of the act of Congress, approved March 2nd, A. D. 1867, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from State courts,'" approved July 22, 1866,
8 and the pl'ff having filed his affidavit and bond as required by the said act of Congress. And on motion of Theo. Hawley, att'y for pl'ff, it is ordered by the court that said bond be accepted as good and sufficient, and that this cause be removed into the next circuit court of the United States for the district of Iowa, and that no further proceedings be had in said cause in this court.

STATE OF IOWA,
Webster County, ss:

I, W. Lumpkin, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the foregoing is a true and perfect copy of the process, pleadings, depositions, testimony, and other proceedings had in the above-entitled cause, as fully as the same now remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3rd day of October, 1874.

(S'g'd) W. LUMPKIN, *Clerk.*

9 The costs in this cause in this court are taxed at twenty-three and $\frac{05}{100}$ dollars, and have been paid by Theo. Hawley, pl'ff's att'y.

Petition for change of venue to Federal court.

In the district court of Webster County, Iowa.

RICHARD B. CHAPMAN
vs.
WILLIAM T. WOLSEY AND OTHERS.

To the honorable the district court of Webster County, Iowa:

Your petitioner, Richard B. Chapman, respectfully shows that he is the plaintiff in the foregoing-entitled suit, and that the same was by him commenced on or about the 26th day of Sept., 1868, in said district court; that your petitioner was at the time of bringing said suit, and still is, a citizen of the State of New York, and a resident thereof.

Your petitioner further shows that there is, and was at the time said suit was brought, a controversy therein between your petitioner
10 and the said defendants, William T. Wolsey and others, who are citizens of Iowa, and resident thereof; that said action was brought by your petitioner upon notice and petition, for the purpose of setting aside a patent issued to defendant, W. T. Wolsey, for the land described in pl'ff's petition, and that the matter in dispute in this suit exceeds the sum of five hundred dollars, exclusive of costs. Your petitioner further represents that this suit has not been tried, but is now pending for trial in the district court of said county of Webster, and that your petitioner desires to remove the same into the circuit court of the United States for the district of Iowa, in pursuance of the act of Congress, approved March 2, 1867, entitled "An act to amend an act entitled an act for the removal of causes of certain cases from State courts," approved July 27th, 1866.

Your petitioner further says that he has filed the affidavit required by said act of Congress, and offers herewith his bond executed

11 by Benj. Grayson, of Webster, as surety, in the penal sum of two hundred and fifty dollars, conditioned as by said act of Congress required.

Your petitioner, therefore, prays that the said bond may be accepted as good and sufficient according to the said acts of Congress, and that the said suit may be removed into the next circuit court of the United States, in and for said district of Iowa, pursuant to the aforesaid acts of Congress in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

(S'g'd) THEO. HAWLEY,
Attorney for Plaintiff.

(Endorsed:) Filed Oct. 2d, 1874. W. Lumpkin, clerk.

12 *Affidavit.*

District court, Webster County, Iowa.

RICHARD B. CHAPMAN }
vs.
WILLIAM T. WOOLSEY. }

STATE OF NEW YORK,
City and County of New York, ss:

I, Richard B. Chapman, of said county, being duly sworn, do depose and say that I am the plaintiff in the above entitled action; that the same is now pending in the district court of Webster County, Iowa; that I am a citizen of the State of New York and that the defendant is a citizen of the State of Iowa; that the matter in controversy and dispute between this plaintiff and the defendant in this action exceeds the sum of five hundred dollars, exclusive of costs; that I have reason to believe and do believe that from prejudice and local influence I will not be able to obtain justice in the State court of Iowa in which this
13 action is pending and untried; that this affidavit is made for the purpose of removing this action to the circuit court of the United States for the district of Iowa, under the provisions of the act of Congress approved March 2, 1867.

(Signed) RICHARD B. CHAPMAN.

Subscribed and sworn to by Richard B. Chapman before me this 20th day of September, A. D. 1874.

[L. S.] JNO. A. HILLERY,
Commissioner for the State of Iowa, 50 Wall st., City of New York.

Know all men by these presents that we, Richard B. Chapman, as principal, and B. Grayson, as surety, are held and firmly bound unto Wm. T. Woolsey in the penal sum of two hundred and fifty dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

14 The condition of this obligation is such that if the said Richard B. Chapman shall enter and file or cause to be entered and filed in the next circuit court of the United States, in and for the district of Iowa, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the district court of the county of Webster and State

of Iowa, in which Richard B. Chapin is plaintiff and Wm. T. Woolsey is defendant, and shall do such other appropriate acts as by the acts of Congress approved July 27, 1866, entitled "An act for the removal of causes in certain cases from State courts," are required to be done upon the removal of a suit from a State court into the United States court, then this obligation to be void; otherwise of force.

RICHARD B. CHAPMAN.
B. GRAYSON.

STATE OF IOWA,
Webster County, ss:

15 I, B. Grayson, of this county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Iowa and a freeholder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I have property in the State of Iowa liable to execution of the value of more than five hundred dollars.

B. GRAYSON.

Subscribed in my presence by B. Grayson and by him sworn to before me this 24th day of Sept., A. D. 1874.

[L. S.] (S'g'd) THEO. HAWLEY,
Notary Public.

The within bond is approved by the court as sufficient this 2d day of Oct., 1874.

D. D. CHASE, *Judge.*

16 In the district court of Webster County, Iowa.

RICHARD B. CHAPMAN
vs.
WM. T. WOLSEY AND MARY J. PEIRCE, JOHN Wolsey, Ann Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, children and heirs at law of Jeannette Wolsey, deceased, made defendants herein by supplemental petition.

And now comes the said plaintiff, and by leave of the court first had and obtained, files this his supplemental petition making Mary J. Pierce, John Wolsey, Ann Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, children and heirs-at-law of Jeannette Wolsey, deceased, parties defendant in this action, and in and by his supplimental petition shows to the
17 court that this action was originally commenced against William T. Wolsey as sole defendant to set aside a patent issued to him by the State of Iowa to the west half of the southeast quarter of section one, in township eighty-seven, range twenty, west of 5th p. m., Iowa.

And the pl'ff further shows that he is the owner of and has and holds the title to said land in fee simple; that at the date of said patent to the said Wm. T. Wolsey the said land aforedescribed was not subject to sale by the State of Iowa as school lands, but was the undivided property of said plaintiff, as stated in his original petition;

that after the date of said patent to said defendant, Wm. T. Wolsey, he conveyed said lands to one Elijah J. Pierce, and afterwards said Pierce conveyed the same to Jeannette Wolsey, the then wife of said defendant, Wm. T. Wolsey; that said conveyances were made without any consideration, and in fraud of plaintiff's rights; that afterwards, and on or about the day of , 18 , the said Jeannette Wolsey
18 departed this life intestate, leaving her surviving Mary J. Pierce, Ann Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Woolsey, Hopkins Wolsey, and Atta Wolsey her children and heirs-at-law; that the said Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey are minors.

And your petitioner further that altho' the said conveyances from defendant, Wm. T. Wolsey, to said Pierce, and the conveyances from said Pierce to Jeannette Wolsey, conveyed no title to the said land, yet the same creates and constitutes a cloud upon the plaintiff's title which should be removed.

And the plaintiff further shows that the making of said conveyances from said Wm. T. Wolsey to said Pierce, and from said Pierce to Jeanette Wolsey, has come to his knowledge since the filing of his original petition herein.

Your petitioner, therefore, prays that the said Mary J. Pierce, Ann Henry, John Wolsey, Geo. Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey may be made
19 parties defendant herein and required to answer the original and this supplimental petition, and that on the hearing of this cause the plaintiff may have the relief sought in and by his original petition, and also that the said deeds from defendant, Wm. T. Wolsey, to said Pierce, and from said Pierce to Jeannette Wolsey, be set aside and cancelled, and declared to pass no title to said land, and that the cloud created thereby be removed, and that plaintiff may have such other and further relief in the premises as shall be agreeable to equity and good conscience.

(Signed) THEO. HAWLEY,
Att'y for Pl'ff.

(Endorsed:) Filed September 23d, 1874. W. Lumpkin, clerk.

In the district court of the State of Iowa in and for the county of Webster.

RICHARD B. CHAPMAN
vs.
WM. T. WOLSEY.

Now comes the defendant, and answering plaintiff's petition says:
20 I. He denies each and every allegation therein contained.

II. For a second and further defence he says that at the time that defendant entered upon said land the same was public land, the property of the United States, and as such subject to pre-emption and homestead settlement under the laws of the United States; that defendant settled upon said lands by virtue of said laws, and that he has, in all respects, complied therewith, and that he is now the owner of said land in fee simple.

III. For a third and further defence he says that said land was heretofore granted by act of Congress to the State of Iowa, and that defendant purchased the same from said State, and that he is now the owner thereof in fee simple.

IV. For a fourth and further defence he says he settled on said
21 land more than ten years prior to the commencement of this action; that he has ever since been in possession of the same under a title adverse to that of the plaintiff herein, and that this action accrued more than ten years prior to the commencement thereof.

V. For a fifth and further defence he says that the said pretended title of the plaintiff is derived through or from the Des Moines Navigation and Railroad Company, an association of individuals claiming to have been incorporated under the laws of the State of Iowa, but this defendant alleges that said pretended corporation was not in fact incorporated; that it was composed entirely of persons who were at no time either citizens or residents of the State of Iowa; that all their pretended acts of incorporation were done at the city of New York; that said association of persons did not previous to commencing business adopt articles of incorporation, and cause the same to be recorded in the
22 office of the recorder of deeds of the county where the principal place of business of said pretended corporation was to be; that said association was formed for the pretended purpose of constructing works of internal improvement in the State of Iowa, to wit, for the improvement of the navigation of the Des Moines River and the construction of railroads; that said pretended corporation did not file and have recorded a copy of its articles of incorporation in the office of the secretary of state; that said association by its articles of incorporation attempted to exempt absolutely all the property of its members from liability for the payment of its debts; that it did not cause a notice to be published for four weeks in a newspaper as convenient as practicable to its principal place of business; that it did not establish its principal place of business at Ottumwa, as stated in its articles of incorporation, but it established the same at the city of New York; that
23 it afterwards changed the same, but did not record or publish such change; that nevertheless said association of individuals, made as aforesaid, fraudulently and falsely gave out and pretended that they were a corporation under the laws of the State of Iowa, and as such attempted to acquire, hold, and transfer property in said State, and especially the property mentioned in said petition, without any right or authority so to do.

Defendant further says that the conveyance under which the plaintiff claims to have derived title from said pretended corporation was executed by the president and treasurer thereof at the city of New York, and that no resolution or order authorizing such conveyance was made by its board of directors in the State of Iowa, nor was the same in any other manner authorized by any act of said pretended corporation.

VI. For a sixth and further defence defendant says that here-
24 tofore, to wit, on the 8th day of August, 1846, a grant of land was made by act of Congress to the Territory of Iowa to aid in the improvement of the Des Moines River; that said grant extended from mouth of said river to the Raccoon Fork thereof, and no further; that afterwards, to wit, on or about the 9th day of June, 1854, the commissioner of the Des Moines River improvement, without any authority therefor, entered into an agreement with an association of persons who falsely and fraudulently pretended to have been incorporated under the laws of the State of Iowa, by the name of the De Moine Navigation and Railroad Company, by which said pretended corporation was to receive said lands in consideration of the work and improvements to be done and made by said pretended corporation; that said agreement was in violation of the grant of said lands to the Territory of Iowa and was wholly unauthorized by the

said State; that at the time of said contract it was well known
25 to the said pretended corporation and to the said commissioner that the said grant did not embrace the lands described in the petition herein; that said corporation wholly failed to perform the conditions of the said agreement upon its part to be kept and performed; that afterwards, and on or about the 22d day of March, 1858, it falsely and fraudulently pretended and claimed to have kept and performed the conditions of said agreement upon its part, and to have expended large sums of money upon the work and improvements specified in said agreement, and by such false and fraudulent representations procured the passage of a joint resolution by the general assembly consenting to a settlement in respect thereto; that afterwards, to wit, on or about the 2nd day of May, 1858, the then governor of the said State of Iowa, without any authority therefor, but induced by the false and fraud-
26 ulent representations of the said pretended corporation, its agents and officers, that it had kept the conditions of said agreement and of the said joint resolution, and that it was entitled to a conveyance for the premises described in the petition, executed to said corporation a deed of conveyance of said premises; that afterwards, to wit, on or about the 2d day of March, 1861, the Congress of the United States, for the purpose of greater security to the bona fide purchasers of certain lands lying along the Des Moines River, above the Raccoon Fork thereof, including this defendant and others, passed a joint resolution relinquishing to the State of Iowa all the title which the United States then retained to said tracts; that the said De Moine Navigation and Railroad Company, without having paid any consideration therefor, or in any manner except as aforesaid having acquired title thereto, falsely
27 and fraudulently claimed to have been a bona fide purchaser of said lands from the State of Iowa, including the premises described in the petition herein.

And defendant further says that by reason of said false and fraudulent claim, that said grant remained wholly unadjusted, and for the purpose of greater protection and security among others of the claim of this defendant, the general assembly of the State of Iowa, on the 30th day of March, 1866, passed an act appointing a commissioner to adjust the claims aforesaid with the general government; that such proceedings were afterwards had, that on the 20th day of June, 1866, a final and complete adjustment was made in respect thereto; that by the terms of said adjustment the lands described in the petition were excluded from the grant of the 2d day of March aforesaid, on account of the claim of defendant, and in lieu thereof other lands were certified to and received by the State of Iowa, and the claim of the defendant to said premises fully established and confirmed; that afterwards, to wit, on the
28 31st day of March, 1868, the general assembly of the State of Iowa, in consideration of the compensation received in other lands in place of the premises described in said petition and of the defendant's claim thereto, and for the purpose of greater security and protection thereto, passed an act ratifying and confirming said settlement so made as aforesaid with the general government; that afterwards, to wit, on or about the 3rd day of March, 1871, for the like purpose and with the like consideration, the Congress of the United States passed an act ratifying and confirming said settlement; that notwithstanding such settlement and the ratification thereof as aforesaid, and the confirming and ratifying of the title of the defendant, the plaintiff claims to have acquired title to said premises under the said joint resolution of Congress

of March 2d, 1861, without which plaintiff has no claim or title to said premises.

GALUSHA PARSONS,
DUNCOMBE AND SPRINGER,
Defendant's Attorneys.

29 *Interrogatories.*

Defendant annexes to his answer the following interrogatories, and requires that they be answered by the plaintiff upon oath; and in case of a failure to answer them, the annexed affidavit will be verified on or before the first day of the next term of this court; and a motion made that the defence be sustained and judgment given accordingly.

1. What is your name, place of residence, and occupation?

2. Did you ever reside in the State of Iowa? If yes, when, where, and how long?

3. Have you ever been a member of an association of persons or a pretended corporation calling itself the "De Moine Navigation Railroad Company"?

4. If you answer the last interrogatory in the affirmative, state
30 when and at what place you became a member of such association, the amount of your subscription, whether such subscription was made upon the books of the company; if so, when and where you subscribed, and if the books containing your subscription are in your possession, or under your control, annexed a copy of your contract of subscription; if they are not in your possession or control, state when and where you last saw them, and who now has the possession or control of them?

5. Were you ever an officer of said company? If so, when and where were you elected? Were you present at the election? If so, state at what place it was held, and who were present at such election.

6. Are you now an officer of said company? If so, where were you elected for your present term, at what place was the election held, and who were present?

31 7. Have you at any time had possession or control of any of the books of said company? If so, state particularly what they are, when and where they came into your possession, where they have been kept ever since, and where they now are.

8. Were you ever present at a meeting of the board of directors of said company, held in the State of Iowa? If so, when and where was such meeting held, and who were present; if you were present at more than one such meeting, state the above facts in reference to each, and when and where the last meeting was held.

9. Were you ever present at a meeting of the board of directors of said company held in the city of New York? If you answer yes, state when and where such meeting was held; if more than one, state particularly the time and place of the holding of each of said meetings, and the names of the persons present.

32 10. If you answer the last interrogatory in the affirmative, state whether the books of said company, or any of them, were present at the last of said meetings; whether the proceedings were entered in any of said books, and if so, in what book, and in whose possession, and where the same now is.

11. Do you know the name and the places of residence of the directors of the said company on the 15th day of April, 1858? If you answer yes, state the same; if you were present at a meeting of said board of

directors on that day, state where it was held, and the name of all the persons present.

12. Do you know the following-named persons, or any of them? If so, give the names of those with whom you are acquainted, their places of residence on the 6th day of May, 1854, and if now living, state their present places of residence: Orville Clark, John Stryker, Edwin C. Litchfield, B. C. Whittemore, Porter Kibbee, Henry Ten Eyck, Henry O'Rieley, Nelson P. Stewart, E. B. Litchfield, and A. Hunt.

33 13. Has the company been engaged in the construction of any works of internal improvement in the State of Iowa, at any time during the last ten years? If so, when and where, and state particularly the character and extent of the works.

14. Has the said company at any time since the 22d day of March, 1858, been engaged in improving the Des Moines River by means of dams, and locks, and canals, or otherwise, or in constructing railroads in connection with or separate from the same? If so, when and where; and state particularly the character and extent of the works.

15. Did you ever see a copy of the by-laws of said company posted at any place in the State of Iowa? If so, where? State the last time that you saw it, if more than once, the town or city, and the particular place where posted.

34 16. Did you ever see a statement of the amount of the capital stock of said company subscribed and the amount actually paid in, and the amount of indebtedness of said company, posted at any place in the State of Iowa? If so, where did you last see, and state the particular place where posted.

17. Did the said company have a common seal? If so, state whether you ever saw the same in the State of Iowa. If you answer that you did, state when, and where, and the last time you saw the same in said State, and in whose possession. State whether the same has been in the said State to your knowledge at any time since the 22d day of March, 1858, and, if so, when and where, and in whose possession. State where and by whom the same has been kept ever since that date, and where and in whose possession the same now is.

GALUSHA PARSONS AND
DUNCOMBE AND SPRINGER,
Def't's Att'ys.

(Endorsed:) No. 259, eq. District court, Webster County. Richard B. Chapman against Wm. P. Wolsey. Answer. Galusha Parsons and Duncombe and Springer, def't's att'ys. Copy. Filed July 22, 1871. W. Lumpkin, clerk.

35 *Original notice.*

In the district court of Webster County, Iowa. October term, A. D. 1868.

RICHARD B. CHAPMAN, PLAINTIFF,
against
WM. T. WOLSEY, DEFENDANT.

To said defendant:

You are hereby notified that on or before the 30th day of September, A. D. 1868, there will be on file in the office of the clerk of the district court of Webster County, Iowa, the petition of Richard B. Chapman,

the plaintiff in this action, claiming of you that his title to the west half of the southeast qr. of sec. 1, town. 87, range 27, west of 5th p. m., Iowa, be quieted, and that all patents, deeds, certificates of pre-emption, tax titles, and other instruments in writing under which you claim title thereto, or an interest therein, be cancelled and set aside and de-
36 clared of no effect or validity, and that the title of the said plaintiff therein and thereto be confirmed; and for other relief.

You are also notified that unless you appear thereto and defend before noon of the second day of the term of said district court of Webster County, to be held on the 2d Monday of October, A. D. 1868, a default will be entered against you and judgment rendered thereon, as prayed in said petition.

HAWLEY AND FITZHUGH,
Attorney for Plaintiff.

(Endorsed:) Original notice. Richard B. Chapman vs. W. T. Wolsey.

This notice came into my hands on the 29th day of April, 1868, and I certify that I personally served the same on the within-named W. T. Wolsey by reading the same to him and delivering him a copy of the same in Washington township, Webster County, Iowa, on the 24th day of August, A. D. 1868.

JACOB WALTZ,
Sheriff Webster County, Iowa.

Fees: Service, 50; mileage, $1.80; copy, 25—total, $2.55.

37 *Petition in equity.*

District court, Webster County, Iowa.

RICHARD B. CHAPMAN, PLAINTIFF,
vs.
W. T. WOLSEY, DEFENDANT.

To the district court of Webster County, Iowa:

The petition of Richard B. Chapman, the above-named plaintiff, respectfully shows to this court:

First. That he is the owner of and has and holds the title in fee to the real estate, situate, lying and being in the said county of Webster, described as follows, to wit, the west half of the southeast quarter of section one, township eighty-seven, range twenty-seven, together with all and singular the hereditaments and appurtenances.

Second. And your petitioner further shows the said above described tract, piece, and parcel of land is of great value and of the value at least of three thousand dollars, and that the said defendant claims to have a title thereto paramount to that of your petitioner, and to
38 hold the same adversely to your petitioner.

Third. And your petitioner further shows that said tract, piece, or parcel of land above described was heretofore, to wit, on or about the 3d day of May, 1868, by the State of Iowa, by a deed or patent duly executed, granted and conveyed to the De Moine Navigation and Railroad Company, a corporation duly created, organized, and established under the laws of the State of Iowa about the year 1854; that on or about the 17th day of February, 1858, the said land was by said company, by deed duly executed, conveyed to your petitioner, who now holds the same under and by virtue of said conveyance.

Fourth. And your petitioner further shows that the said defendant claims title to the said tract aforesaid, under and by virtue of some alleged or pretended title obtained by him from some source unknown to the plaintiff, after the conveyance of the same as aforesaid to the said De Moine Navigation and Railroad Company by the State of Iowa, and when the title absolute and unconditional in and to said land was
39 in your petitioner, the evidence of which title is now in the hands of the defendant, a copy of which your petitioner is now unable to give or set forth.

Fifth. And your petitioner further alleges and avers, that the said title, by whomsoever given (or of whatsoever nature), to the defendant as aforesaid, is without any force or validity; that the same was so received by defendant after the Government of the United States had certified the said lands to the State of Iowa, and after the United States had parted with all their title thereto, and after your petitioner had acquired the title thereto; that the person or persons so issuing or executing the said title to said land to the said defendant as aforesaid had no authority whatever so to do; that in so doing they acted contrary to and in violation of law, for the reason that the said tract, piece, or parcel of land was not at the time of granting or issuing or executing the said title to the said defendant as aforesaid subject or liable to be sold or conveyed by any person or persons, except the plaintiff herein,
40 and all their acts in the premises, as well as the said title, are void, and confer no rights upon the defendant and gives him no title whatever to the said land, and altho' the said title or evidence thereof, for the reasons aforesaid, confers no title to the said land upon the said defendant and rests no title thereto in him, yet the same creates and constitutes a cloud upon the title of your petitioner to the said land, which should be removed. Your petitioner therefore prays that the said title and all evidence thereof to the said land so issued to said def't by the person or persons as aforesaid, and under which defendant now claims title to the said land, be cancelled and set aside, and by a decree of this court declared of no force or validity or effect, and that the title in and to said land may be decreed to be in your petitioner, wholly and entirely and unconditionally, and that your petitioner may have such other and further relief in the premises as shall be agreeable to equity and good conscience.

(S'g'd) THEO. HAWLEY,
Solicitor for Plaintiff.

41 (Endorsed:) No. 250. In the district court of Webster County. R. B. Chapman vs. William T. Wolsey. Petition in equity. Copy. $3.00. Filed September 26, 1868. W. Lumpkin, clerk. Filing fees paid by Theodore Hawley. Filed October 5, 1874. George B. Corkhill, clerk.

42 Afterwards, on the 22d day of July, 1875, a printed abstract was filed in said cause, a true copy of which is as follows to wit:

43 In the circuit court of the United States for the district of Iowa.

RICHARD B. CHAPMAN
vs.
WILLIAM T. WOLSEY, MARY J. PIERCE, ANN Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, children and heirs-at-law of Jeanette Wolsey, deceased, and the State of Iowa.

To the judges of the circuit court of the United States for the district of Iowa:

Richard B. Chapman, of Westchester County, and a citizen of the State of New York, brings this, his bill of complaint, against William T. Wolsey, Mary J. Pierce, Ann Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, of the county of Webster, and citizens of the State of Iowa, and the State of Iowa, and thereupon your orator complaining, says:

First. That he is the owner of and has and holds the title in fee simple to the real estate situate, lying and being in the county of Webster and State of Iowa, described as follows, to wit: The west half of the south-east quarter of section one (1), township eighty-seven (87) north, of range twenty-seven (27) west, of the 5th P. M., Iowa, together with all and singular the hereditaments and appurtenances.

Second. And your orator further shows that the said above described tract of land is situate within five miles of the Des Moines River, and in the State of Iowa, and is of great value, and of the value of two
44 thousand dollars, and that the said defendants claim to have a title thereto paramount to that of your orator, and to hold the same adversely to your orator.

Third. And your orator further shows that the said tract of land above described was heretofore and on or about the 3d day of May, 1858, by the State of Iowa, by a deed or patent duly executed and delivered, granted and conveyed to the Des Moines Navigation & Railroad Company, a corporation duly created, organized and established under the laws of the State of Iowa, about the year 1854, and afterwards and on or about the seventeenth day of February, 1858, said land was by said company, by deed duly executed, conveyed to your orator, who now holds said land under and by virtue of said conveyance.

Fourth. And your orator further shows that on the 8th day of August, 1846, the Congress of the United States passed the act entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory." That by the first section thereof there was granted to said Territory the one equal moiety in alternate sections of the public lands remaining unsold and not otherwise disposed of, encumbered or appropriated, in a strip five miles in width, on each side of said river, to be selected within said Territory, by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States. And by the fourth section of said act it was enacted "That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purposes shall be and become the property of the State for the purposes contemplated in the act, and no other, provided the legislature of the State of Iowa shall accept the said grant for the said purposes." That the said grant was duly

accepted by the legislature of said State, and the Governor thereof appointed agents who selected the lands situate in the alternate odd numbered sections within the limits of the grant for and in behalf of the State, and such selections were duly reported to the Commissioner of the General Land-Office and were duly approved by said Commis-
45 sioner and by the Secretary of the Treasury of the United States. That such selections and approvals were made within the year 1846, and thereupon, on the 17th day of October, 1846, the Commissioner of the General Land-Office directed the register and receiver in Iowa having charge of said lands to reserve from sale and entry of any kind all the unsold and unappropriated lands in the sections selected by the Governor of Iowa as aforesaid. That on the 23d day of February, 1848, the said Commissioner of the General Land-Office decided that under said grant the State of Iowa was "entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river within the limits of Iowa."

And on the 2d day of March, 1849, the Secretary of the Treasury of the United States decided that the said grant extended on both sides of said river from its source to its mouth, but not to lands on the river in the State of Missouri, and in pursuance of such last named decision the said Commissioner on the first day of June, 1849, directed the aforesaid register and receiver in the State of Iowa to withhold from sale all the lands situate in the odd numbered sections within five miles on each side of the Des Moines River above the Raccoon Fork thereof. That such order of the Commissioner was received by the register and receiver on the 16th day of June, 1849, and the said order was adopted and approved by the Secretary of the Treasury of the United States and by all the other officers of the United States having charge of the public lands, and the same was acted upon and continued and carried out by all succeeding Commissioners of the General Land Office and by all succeeding Secretaries of the Treasury and the Interior having charge of the public lands until the said lands were duly certified and approved to the State of Iowa under said grant as herein stated. That all of the said lands, including those herein claimed by your orator, were certified and approved to the State of Iowa as having passed to it under said grant by the Commissioner of the General Land Office and by the Secretary of the Interior in October, 1851, and March, 1852, and
46 December, 1853, and January, 1854, and such certificates and approvals were at the dates aforesaid duly delivered to the State of Iowa by said Commissioner of the General Land Office with the approval of the Secretary of the Interior, who were duly authorized by law to execute and deliver said certificates, and the same have never been canceled, or annulled, or revoked, but are still outstanding and in full force; that at the time of the making of said certificates the said lands were duly entered upon the books of the General Land Office at Washington as granted to the State of Iowa for the Des Moines River improvement under the said act of 8th August, 1846, and the same have always been held as withheld and reserved from sale and pre-emption and private entry, and the said lands have been so lawfully reserved and withheld ever since the first day of June, 1849, the said order of reservation having never been canceled or revoked. That at various times subsequent to the first day of June, 1849, the Commissioner of the General Land Office and the Secretary of the Interior, being thereunto duly authorized by law, have recognized and continued said order of reservation, and the same has never been in any manner lawfully annulled or revoked. That subsequently to the making and delivery of

said certificates aforesaid to the State of Iowa and on or about the year 1854, the said State, by a written contract, agreed to sell all of the said lands which had not been sold by it prior to the 23d day of December, 1853, to the Des Moines Navigation & Railroad Company, a corporation organized and existing under the laws of the State of Iowa; and on a settlement with said company the State of Iowa, on or about the 3d day of May, 1858, by its deed or patent, duly executed, delivered, and conveyed to the said Des Moines Navigation & Railroad Company, in fee simple, all the unsold lands conveyed by and included in the said certificates aforesaid, and among which was the tract foresaid described and herein claimed by your orator. That such conveyance by the State to the said company was made for and upon a good and valid consideration paid by said company and in compliance with an express law of
47 said State, and that after the execution of such conveyance to the said company by the State, the said company duly conveyed the lands herein described to your orator; and the said company and your orator were and are bona fide purchasers of said land under the State of Iowa.

Fifth. And your orator further shows that afterwards, and on or about the 2d day of March, 1861, the Congress of the United States, by a joint resolution entitled "Joint resolution to quiet title to lands in the State of Iowa," relinquished to the State of Iowa all the title which the United States "still then retained" in the tracts of land along the Des Moines River and above the Raccoon Fork thereof, in the State of Iowa, which had been certified to the State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, 1846, and which were held by bona fide purchasers under the State of Iowa; and on the 12th day of July, 1862, by an act entitled "An act confirming a land claim in the State of Iowa, and for other purposes," the Congress of the United States extended the grant made by the act of August 8, 1846, so as to include the alternate sections designated by odd numbers, lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of the State. And your orator submits and insists that by virtue of the said several acts of Congress herein recited and referred to, and the acts of the executive officers and departments thereunder, all the title which the United States ever had to the lands herein claimed by your orator had been and were duly transferred from and out of the United States and passed and became vested in the State of Iowa under the said grant of August 8, 1846, and the grantees of said State under said grant, including your orator as herein alleged.

Sixth. And your orator further shows that the said defendants claim title to the above described tract of land, as follows: That the State of Iowa, on or about the 20th day of July, 1850, by its agents, selected the said tract as part of the 500,000 acres enuring to said State as school lands under the 8th section of the act of Congress, approved Sep-
48 tember , 1841; that the lists containing said tract were by said agents returned to the Commissioner of the General Land Office, and on or about the 5th day of March, 1851, the said lists were erroneously and by mistake approved to the State of Iowa as school lands, and before the grant of August 8, 1846, for the improvement of the Des Moines River had been adjusted by the land department of the United States so far as the townships embracing said lands extended; and that afterwards, and on the 30th day of December, 1853, the Commissioner of the General Land Office and Secretary of the Interior, being thereunto duly authorized by law, revoked, canceled and set aside the said selec-

tions and approval of said lands as school lands for the reason that said tract had been theretofore reserved to the State of Iowa under the grant of August 8, 1846; and on the same day the said tract was duly certified to said State by said Secretary under the said grant of August 8, 1846, and the State of Iowa was authorized and directed to select other lands in lieu thereof as school lands under said act of September, 1841. That afterwards the State of Iowa did select other lands in lieu of said tract as school lands, which selections were subsequently duly approved by the Secretary of the Interior to said State as school lands, and said State has accepted of the same in lieu of the tract herein described, and has sold the same and appropriated the proceeds thereof under the provisions of the said act of September, 1841.

That on or about the 21st day of December, 1854, and after the selections and approvals of said tract as school lands had been annulled, canceled and set aside as herein alleged, the State of Iowa issued to said defendant, William T. Wolsey, a patent for the tract herein described as part of the 500,000 acres selected under the act of September, 1841, as school lands, which said patent is now in the hands of said defendant, and your orator is unable to set forth a copy thereof; but your orator expressly alleges and avers that the said patent so issued to the defendant, William T. Wolsey, by the State of Iowa, is without any
49 force or validity, and conferred no title whatever upon the said defendant; and that the said patent was so issued after the Government of the United States had certified and approved the said tract to the State of Iowa under the act of August 8, 1846, and after the Government of the United States had revoked and annulled and set aside the selection of said tract as school lands under the act of September, 1841, and when the State of Iowa had no lawful authority to sell and convey the same to said defendant as school lands; and that the State of Iowa and the executive officers of said State, in so issuing said patent, had no authority whatever so to do; that in so doing they acted without authority and contrary to and in violation of law, for the reason that the said tract was not at the time of the sale of the same to said defendant and the issuing of said patent to him, a part of the grant of Congress to said State for school purposes, and that said patent is null and void and confers no title to said tract to said defendant.

And your orator further shows that after the commencement of this action against the defendant, Wm. T. Wolsey, he conveyed said land to one Elijah Pierce, and said Pierce thereafter conveyed the same to Jeanette Wolsey, the then wife of the defendant, William T. Wolsey; that said conveyances were made without any consideration and in fraud of plaintiff's rights; that afterwards, and on or about the day of , 187 , the said Jeanette Wolsey departed this life intestate, leaving her surviving the defendants, Mary J. Pierce, John Wolsey, Ann Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, her children and heirs at law; that the said Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey are minors.

Eighth. And your orator further shows that the defendant, the State of Iowa, by an act of the general assembly thereof, approved March 12, 1874, entitled "An act to quiet and confirm the title to certain lands in Webster and Hamilton Counties and adjust the matters connected therewith," claims the lands herein described as part of the 500,000 acre grant, and in and by said act claims some right, title, and interest therein adverse to the claim of your orator.

50 Ninth. And your orator further avers that although the said

patent issued by the State of Iowa to defendant, Wm. T. Wolsey, conferred no title to the said land upon him, and although the conveyance from said Wm. T. Wolsey to said Pierce, and from said Pierce to Jeanette Wolsey, conferred no title to said land in the defendants herein, yet the same creates and constitutes a cloud upon the title of your orator to said tract, which should be removed.

Tenth. And your orator further shows that the said acts of the defendant, the State of Iowa, in issuing said patent and the conveyances of said tract by the defendant, Wm. T. Wolsey, to said Pierce, and by said Pierce to Jeanette Wolsey, as herein complained of, are contrary to equity and injure your orator, and that he has no relief save in a court of equity where such matters are solely cognizable and relievable.

In consideration thereof your orator therefore prays that the defendant, the State of Iowa, may be made party to this bill and required to answer the same, and that on the final hearing hereof, the said patent issued by the defendant, the State of Iowa, to the defendant, Wm. T. Wolsey, and the conveyance executed by said Wolsey to Elijah Pierce, and by said Pierce to Jeanette Wolsey, and under which defendants now claim the title to said land, may, by the decree of this court, be canceled and set aside, and declared of no force or validity or effect; that in case said patent should be held to confer any title upon the defendants, that the same be declared to be held by them in trust for the benefit of your orator; that the cloud created by said patent and conveyances upon your orator's title be removed and that your orator's title to the said above described tract be confirmed and declared valid and absolute, and that he may have such other and further relief in the premises as shall be agreeable to equity and good conscience.

THEO. HAWLEY,
Solicitor for Complainant.

51 *Answer.*

In the circuit court of the United States for the State of Iowa.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY AND THE STATE OF IOWA.

Now comes the defendant William T. Wolsey, and answering plaintiff's amended bill, says:

I. He denies each and every allegation therein contained.

II. For a second and further defence, he says that said land was heretofore granted by act of Congress to the State of Iowa, and that defendant purchased the same from said State, and that he is now the owner thereof in fee simple; that said purchase was made of the school-fund commissioner of said State on the 20th day of August, 1853, under a grant of lands to said State by act of Congress of the date of September 4th, 1841, entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights."

III. For a third and further defence, he says he settled on said land more than ten years prior to the commencement of this action, that he has ever since been in possession of the same under a title adverse to that of the plaintiff herein, and that this action accrued more than ten years prior to the commencement thereof.

52 IV. For a fourth and further defence, he says that the said

pretended title of the plaintiff is derived through or from the De Moine Navigation and Railroad Company, an association of individuals claiming to have been incorporated under the laws of the State of Iowa, but this defendant alleges that said pretended corporation was not in fact incorporated, but that it was composed entirely of persons who were at no time either citizens or residents of the State of Iowa; that all their pretended acts of incorporation were done at the city of New York; that said association of persons did not previous to commencing business adopt articles of incorporation, and cause the same to be recorded in the office of the recorder of deeds of the county where the principal place of business of said pretended corporation was to be; that said association was formed for the pretended purpose of constructing works of internal improvement in the State of Iowa, to wit, for the improvement of the navigation of the Des Moines River, and the construction of railroads; that said pretended corporation did not file and have recorded a copy of its articles of incorporation in the office of the secretary of state; that said association by its articles of incorporation attempted to exempt absolutely all the property of its members from liability for the payment of its debts; that it did not cause a notice to be published for four weeks in a newspaper as convenient as practicable to its principal place of business; that it did not establish its principal place of business at Ottumwa as stated in its articles of incorporation, but it established the same at the city of New York; that it afterwards changed the same, but did not record or pub-publish such change; that nevertheless said association of individuals, made as aforesaid, fraudulently and falsely gave out and pretended that they were a corporation under the laws of the State of Iowa, and as such attempted to acquire, hold, and transfer property in said State, and especially the property mentioned in said petition, without any right or authority so to do.

Defendant further says that the conveyance under which the
53 plaintiff claims to have derived title from said pretended corporation was executed by the president and treasurer thereof at the city of New York, and that no resolution or order authorizing such conveyance was made by its board of directors in the State of Iowa, nor was the same in any other manner authorized by any act of said pretended corporation.

V. For a fifth and further defence, defendant says that heretofore, to wit, on the 8th day of August, 1846, a grant of land was made by act of Congress to the Territory of Iowa to aid in the improvement of the Des Moines River; that said grant extended from the mouth of said river to the Raccoon Fork thereof, and no further; that afterwards, to wit, on or about the 9th day of June, 1854, the commissioner of the Des Moines River improvement, without any authority therefor, entered into an agreement with an association of persons who pretended to have been incorporated under the laws of the State of Iowa, by the name of the De Moine Navigation and Railroad Company, by which said pretended corporation was to receive said lands in consideration of the work and improvements to be done and made by said pretended corporation; that said agreement was in violation of the grant of said lands to the Territory of Iowa, and was wholly unauthorized by the said State; that at the time of said contract it was well known to the said pretended corporation, and to the said commissioners, that the said grant did not embrace the lands described in the petition herein; that said corporation wholly failed to perform the conditions of the said agreement upon its part to be kept and performed; that afterwards, and on or about the

22d day of March, 1858, it falsely and fraudulently pretended and claimed to have kept and performed the conditions of said agreement upon its part, and to have expended large sums of money upon the work and improvements specified in said agreement, and by such false and fraudulent representations procured the passage of a joint resolution by the general assembly consenting to a settlement in respect thereto; that afterwards, to wit, on or about the 3d day of May, 1858, the then governor of the said State of Iowa, without any authority therefor,
54 but induced by the false and fraudulent representations of the said pretended corporation, its agents and officers, that it had kept the conditions of said agreement, and of the said joint resolution, and that it was entitled to a conveyance for the premises described in the petition, executed to said corporation a deed of conveyance of said premises; that afterwards, to wit, on or about the 2d day of March, 1861, the Congress of the United States, for the purpose of greater security to the bona fide purchasers of certain lands lying along the Des Moines River above the Raccoon Fork thereof, including this defendant and others, passed a joint resolution relinquishing to the State of Iowa all the title which the United States then retained to said tracts of land; that the said De Moine Navigation and Railroad Company, without having paid any consideration therefor, or in any manner, except as aforesaid, having acquired title thereto, falsely and fraudulently claimed to have been a bona fide purchaser of said lands from the State of Iowa, including the premises described in the petition herein; and defendant further says that by reason of said false and fraudulent claim, that said grant remained wholly unadjusted, and for the purpose of greater protection and security among others of the claim of this defendant, the general assembly of the State of Iowa, on the 30th day of March, 1866, passed an act appointing a commissioner to adjust the claims aforesaid with the general government; that such proceedings were afterwards had; that on the 20th of June, 1866, a final and complete adjustment was made in respect thereto; that by the terms of said adjustment, the lands described in the petition were excluded from the grant of the 2d day of March aforesaid, on account of the claim of defendant and in lieu thereof other lands were certified to and received by the State of Iowa, and the claim of defendant to the said premises fully established and confirmed; that afterwards, to wit, on the 31st day of March, 1868, the general assembly of the State of Iowa, in consideration of the compensation received in other lands in place of the premises described in said petition, and of this defendant's claim thereto, and for
55 the purpose of greater security and protection thereto, passed an act ratifying and confirming said settlement so made as aforesaid with the general government; that afterwards, to wit, on or about the 3d day of March, 1871, for the like purpose and with the like consideration, the Congress of the United States passed an act ratifying and confirming said settlement; that notwithstanding such settlement and the ratification thereof, as aforesaid, and the confirming and ratifying of the title of the defendant, the plaintiff claims to have acquired title to said premises under the said joint resolution of Congress of March 2d, 1861, without which plaintiff has no claim or title to said premises.

GALUSHA PARSONS AND
JOHN A. HULL,
Respondent's Solicitors.

In the circuit court of the United States, in and for the district of Iowa.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY AND THE STATE OF IOWA.

The answer of the State of Iowa, one of the defendants above named, saving and reserving to itself all benefit and advantage of exception, says:

I. That the lands in the said bill of complaint described prior to the 4th day of September, 1841, were a portion of the public domain.
56 of the United States, and wholly unappropriated; that upon that day, Congress, by an act entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," granted to the State of Iowa five hundred thousand acres of land for purposes of internal improvement, to be by it selected and located on any public land within its limits; that afterwards, to wit, on the 3d day of March, 1845, Congress, by an act entitled "An act for the admission of the States of Iowa and Florida into the Union," consented to a diversion of the said grant to the purposes of education; that afterwards, to wit, on the 14th day of July, 1850, the State selected the lands described in said bill of complaint as a portion of said grant, for the purposes aforesaid; that afterwards, to wit, on the 20th day of February, 1851, the general government, by its proper officers, duly approved such selection and certified said lands to said State under the grant aforesaid; that afterwards, to wit, on the 20th day of August, 1853, the school fund commissioner of the county of Webster, in which county said lands are situate, entered into an agreement with the said defendant, Wolsey, for the sale of said lands to him, the said Wolsey, who then and there paid in full therefor and entered into the possession thereof, and has ever since continued to occupy the same; that afterwards, to wit, on the 21st day of December, 1854, this defendant by its proper officers duly conveyed the said lands to the said Wolsey by letters patent bearing date upon that day; that afterwards, to wit, on or about the 22d day of March, 1858, a controversey having arisen in respect to the true construction of the said grant of August 8th, 1846, under which the complainant claims title to said lands, and the rights of the De Moine Navigation and Railroad Company thereto, for the purpose of settling all matters in controversy between the State of Iowa and said company, the general assembly of said State passed a joint resolution proposing terms of settlement; that by the terms thereof the said land and all of the lands sold by the said State within the limits or supposed limits of said grant, prior to the 23d day of December, 1853, within five miles of the Des Moines
57 River, were reserved to the said State and its grantees and were expressly excepted from the lands granted or confirmed to the said De Moine Navigation and Railroad Company; that afterwards, to wit, on the 15th day of April, 1858, the said company accepted the said proposition for settlement; that afterwards, to wit, on or about the 3d day of May, 1858, the governor of the said State of Iowa, without being in any way authorized so to do, but under the supposed authority of the said joint resolution executed and delivered to the said De Moine Navigation and Railroad Company, deeds or patents for the lands to which it was supposed to be entitled by the terms of said settlement;

that the lists of lands embraced in said deeds or patents contained several hundred descriptions; that the same were prepared by the agents of the said De Moine Navigation and Railroad Company, and were by said agents fraudulently represented not to embrace any of the lands sold by the State prior to December 23d, 1853, and the same were executed and delivered by the said governor under the belief that the same did not include the lands described in the bill of complaint herein; that afterwards, to wit, on the 30th day of March, 1866, the said grants, together with others, being then pending before the Department of the Interior, and wholly unadjusted, the said State passed an act appointing a commissioner to adjust the same with said department; that an adjustment of said several grants was thereafter duly made, to wit, on the 21st day of May, 1866, and the same was duly approved by the census board of said State, according to the terms of said act, on the 20th day of June, 1866; that by the terms of said settlement the lands described in said bill were confirmed to the State as a part of the said grant of September 4th, 1841, and exempted from the operation of said act of August 8th, 1846; that afterwards, to wit, on the 31st day of March, 1868, the general assembly of said State passed an act ratifying and confirming said settlement; that afterwards, to wit, on the 3d day of March, 1871, the same was duly ratified and confirmed by act of Congress.

This defendant, further answering, says:

58 It denies that the said lands were at any time sold or conveyed to the said De Moine Navigation and Railroad Company by this defendant. It further says the same were not embraced in the said alleged grant under which the complainant claims the same by the allegations of his said bill, nor did this defendant at any time or in any way authorize a conveyance thereof to the said complainant. Defendant further says that the said alleged list of lands purporting to have been made by the governor of the said State to the bona fide purchasers of the lands granted to said State for the purpose of improving the navigation of the Des Moines River were not in fact made by said governor, nor was the said company a bona fide purchaser from this defendant, nor did it in fact pay any consideration therefor; that at the time of said settlement the said company, its agents, officers, and attorneys then and there representing it, well knew that the said grant did not include said lands. Defendant further says it denies each and every allegation in said bill contained.

GALUSHA PARSONS AND
JOHN A. HULL,
Defendants' Solicitors,
With M. E. CUTTS,
Attorney-General.

59 In the circuit court of the United States in and for the district of Iowa.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY AND OTHERS.

The answer of Mary J. Pierce, John Wolsey, Ann Henry, George Wolsey, Lewis Wolsey, to the bill of complaint of Richard B. Chapman.

Saving and reserving the benefit of exceptions the said defendants deny each and every allegation in said bill of complaint contained.

These defendants as a further defence adopt the answer of William T. Wolsey, on file herein, and ask that the same and all the averments thereof may be as fully held a portion of their answer herein as if the same were in form repeated herein.

Wherefore they humbly pray that they may be dismissed with their reasonable costs and charges.

GALUSHA PARSONS,
Solicitor for above named Defendants.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY AND OTHERS.

The answer of the infant defendants, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, and Atta Wolsey, by Galusha Parsons, their guardian ad litem herein to the bill of complaint of Richard
60 B. Chapman, saving and reserving the benefit of exceptions, says, the said defendants deny each and every allegation in said bill contained.

GALUSHA PARSONS,
Guardian ad litem for above named infant Defendants.

Circuit court United States district of Iowa.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY AND OTHERS.

The replication of the above-named complainants to the answer of the defendants filed herein.

This repliacnt, saving and reserving unto himself all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the said answer, for replication thereto, says that he will aver, maintain and prove his bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this replicant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

THEO. HAWLEY,
Solicitor for Complainant.

61 In the circuit court of the United States for the district of Iowa.

RICHARD B. CHAPMAN
vs.
WILLIAM T. WOLSEY AND OTHERS.

On the 8th day of August, 1846, the Congress of the United States passed an act of which the following is a copy:

An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines river, in said territory.

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, that there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines river from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, incumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasurer of the United States.

SECTION 2. And be it further enacted, that the lands hereby
62 granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the Governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SECTION 3. And be it further enacted, that the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or person in their service passing through or along the same: Provided always, that it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. And be it further enacted, that whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other, provided the legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved Aug. 8, 1846.

Resolution No. 11.

DES MOINES RIVER GRANT.

Joint resolution accepting the grant of lands for the improvement of the navigation of the Des Moines river.

Resolved by the general assembly of the State of Iowa, that the donation of land contemplated in the act of Congress approved August 8, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river in said Territory be, and the same is hereby, accepted for the purpose specified in said act.

Resolved, that the said grant of lands contemplated in the said act does not form a part or come out of the five hundred thousand acres to which the State of Iowa is entitled upon her entrance into the Union by virtue of the act of Congress of 1841; and

Whereas the general assembly of Iowa does not believe that this

grant ought to constitute a part of the five hundred thousand acres granted to the new States: Therefore be it

63 Resolved, That if such was the intention of Congress in the passage of the law making the grant, that our representatives in Congress be hereby instructed to use their efforts to obtain the same grant contemplated in the act of Congress of August, 1846, & for the same purpose, seperate and distinct from the grant contemplated in the act of 1841.

Resolved further, That this legislature is of the opinion that it is contrary to the usage of Congress to make donations of lands to States in any manner, except to confine such donations to the particular uses for which it was made; that the restriction in said act of Congress of August, 1846, which confines the State to the sale of no more than thirty thousand dollars at any one time would render it impossible for the State to prosecute the improvement of the Des Moines River in such a manner as would make it advantageous to the State or contractor, and that we hereby request our delegation in Congress to use their efforts to procure such a change in the act of August granting to Iowa lands for the improvement of the Des Moines River as will authorize the State to sell and dispose of the lands in any quantity and at any time it may be deemed best to effect the contemplated improvement.

Resolved further, That these resolutions be immediately presented to our representatives in Congress.

Approved Jan. 9th, 1847.

Letter of James H. Piper, Acting Commissioner of the General Land Office, to the register and receiver of the United States land office at Iowa City, Iowa, to wit:

GENERAL LAND OFFICE, *Oct.* 14, 1846.

GENTLEMEN: I have this day forwarded via Baltimore to the care of the register and receiver at St. Louis, Missouri, one box containing for your use eight tract books in which are opened the townships in your districts so far as at present surveyed; two blank ones for future use, and two record books for letters, one for the register and the other for the receiver. In the tract books have been registered the sales of land within the Iowa district, made at Dubuque and Marion, Burlington and Fairfield. Those made at the two former places have the letter D after the number of the certificate; those at the latter two the letter F. This was done for future information, when the sales of Iowa shall have become interspersed with those now registered.

64 Only those declaratory statements, the time for compliance with the terms of which had not expired on the first of June last, have been entered; these should be entered in pencil.

Odd sections within the limits of the grant for the improvement of the Des Moines River have been marked as granted to the State, though the sections have not yet actually been made.

* * * * * * *

I am, very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

REGISTER & RECEIVER *at Iowa City, Iowa.*

UNITED STATES LAND OFFCE, *Des Moines, Iowa.*

I hereby certify the foregoing is a true and correct copy of a letter on file in this office, in so far as relates to lands known and designated as

"Des Moines River lands." Given under my hand at my office on the 26th day of October, A. D. 1869.

F. G. CLARKE.
Register of the United States Land Office at Des Moines, Iowa.

That on or about the 17th day of October, 1846, James H. Piper, Acting Commissioner of the General Land Office, addressed and forwarded to the then governor of Iowa an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *Oct.* 17, 1846.

His Excellency JAMES CLARK, *Governor of Iowa, Iowa City:*

SIR: By the first section of the act of Congress approved 8th of August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Ter-
65 ritory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the Raccoon Fork of the Des Moines River. The act authorizes the selections to be made by an agent or agents appointed by you, but as the grant is limited to one equal moiety of the unsold and unappropriated, etc., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, 8, etc., or those that have odd numbers, as 1, 3, 5, etc. The odd numbers would probably be the most advantageous to the Territory, as in selecting the even numbers you would be deprived of the 16th section in each township, which, as you are aware, is reserved for schools.

Enclosed I send you a diagram of this grant, the boundary being colored pink, the alternate sections blue, and the school lands brown. I also enclose you a list showing you the areas of all the sections, or parts of sections, within this grant, those having odd numbers in one column, and the even numbers in another. When you have determined the selections you will select, please advise the land officers at Fairfield and Iowa City, who have been instructed to withhold from sale or entry of any kind all the vacant and unappropriated land in the sections you may select. Please also advice this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately prepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

With great respect, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

66 That on the said 17th day of October, 1846, the said James H. Piper, Acting Commissioner, addressed and forwarded an official letter to the register and receiver of the United States land office at Iowa City, of which the following is a copy:

GENERAL LAND OFFICE, *Oct.* 17, 1846.

REGISTER AND RECEIVER, *Iowa City, Iowa:*

GENTLEMEN: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted, "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Forks (so called), in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States." This grant, you perceive, affects the lands five miles in width on each side of the Des Moines, from the southern boundary of your district to the Raccoon Forks of the Des Moines, as shown by the enclosed diagram.

No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbers.

As soon as you are so advised, you will please reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by him till further orders from this office.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

That on the 27th of November, 1846, James H. Piper, Acting Commissioner of the General Land Office, addressed and forwarded to Jesse Williams an official letter, of which the following is a copy:

67 GENERAL LAND OFFICE, *Nov.* 27, 1846.

JESSE WILLIAMS, Esq., *Iowa City, Iowa.*

SIR: By a communication from the governor of Iowa, of the 14th inst., it appears that the letter to him from this office, of the 17th ultimo, enclosing a diagram of the grant made by the act of 8th August last, to aid in the improvement of the Des Moines River, and containing the views of this office in relation thereto, has not been received; and as the governor requests that further communications on the subject be addressed to you, I enclose for your information a copy of that letter.

It is important to the interests of Iowa that the land officers be advised of the selection you design to make, at the earliest practicable period, as the sales are progressing and the grant does not attach till the selection is made, and consequently the lands cannot be secured till that has been done.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

That subsequently the governor of Iowa as provided and contemplated

by the first section of the said act of August 8th, 1846, appointed as agents to select, designate and set apart the lands granted by said act to the State, Jesse Williams and Josiah H. Bonney, who, on the 17th day of December, 1846, made report to the governor of their doings as such agents by letter of which the following is a copy:

IOWA CITY, *Dec.* 17, 1846.

To His Excellency JAMES CLARK, *Governor of Iowa Territory.*

SIR: The undersigned, commissioners, appointed under the provisions of the act of Congress, approved August 8th, 1846, making a grant of land for the improvement of the Des Moines River, beg leave to report to your excellency, that we have selected the odd sections as designated on the map furnished by the General Land Office, showing the location of the Des Moines and the selections of land within five miles of said river, which map is herewith returned to you.

Very respectfully, your obedient servants,

JESSE WILLIAMS,
JOSIAH H. BONNEY.

68 That the general assembly of the State of Iowa, by act on the 24th of February, 1847, created a "board of public works," consisting of a president, secretary and treasurer, to whom were committed the work, construction, and management of the river improvement, and the care, control, sale and disposal, and management of the lands granted to the State under and by the said act of August 8th, 1846. That said board was duly organized and went into operation on the 22nd Sept., 1847, and that on the 23rd February, 1848, Richard M. Young, then Commissioner of the General Land Office, addressed to said board of public works an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *Feb.* 23, 1848.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

It is not unusual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned; and these will, of course, be transmitted as they can be prepared.

All the aid that this office can give the board of public works, in the discharge of its duties, will be cheerfully rendered, and, if it is possible to procure copies of the reports of the Topographical Bureau of the examination heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.

69 By the terms of the law, the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered or appropriated, in a strip of

five miles in width on each side of the river to be selected within said territory, etc., etc., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, Esq.,
Secretary of Board of Public Works, Fairfield, Iowa.

On the (19) nineteenth of June, (1848,) eighteen hundred and forty-eight, without any notice of a change of opinion, a proclamation was issued, signed by the President and countersigned by the Commissioner of the General Land Office, ordering into market some of the lands which lay above the Raccoon Fork, and which would belong to the State, according to the rule laid down in the aforesaid letter of the (23) twenty-third of February, (1848,) eighteen hundred and forty-eight. The sale was to take place on the (16) sixteenth of October, 1848.

That on the 18th of September, 1848, Charles Corkery, secretary of the (Iowa) Board of Public Works, addressed and forwarded to R. M. Young, Commissioner of the General Land Office, a letter of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th June last, for the sale of lands in Iowa, by which I perceive that lands donated to this State for the improvement of the Des Moines River are
70 to be offered for sale at Iowa City, on Monday, the 16th October next. These lands are situated above the Raccoon Forks of the Des Moines River, in townships No. 79, 80, etc., ranges No. 25, 26, etc., and a sale by the United States will be in conflict with your opinion expressed to me in your letter of the 23d February last, in which you say that "the State is entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river, within the limits of Iowa."

Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediment to her favorable prospects in this regard. We believe that the fact of having these lands embraced in the proclamation was an oversight, without any intention to curtail the resources of the State, and that it will be corrected on being discovered.

Very respectfully, sir, your obedient servant,

CHARLES CORKERY,
Secretary of Board of Public Works.

Hon. R. M. YOUNG,
Commissioner of General Land Office.

NOTE.—A copy of the foregoing letter has been inclosed in the following letter to the register of the land office at Iowa City.

That on the same day (September 18, 1848), the said Charles Corkery,

as secretary of the Board of Public Works, addressed to C. Neeley, register of the United States land office at which the sale was ordered to take place, the protest of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: I enclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office at Washington City, and take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only on the act of Congress donat-
71 ing lands to the State of Iowa for the improvement of the Des Moines River, but also on the decision of the Commissioner of the General Land Office, bearing date the 23d February, 1848, in the words as follows: "A question has arisen as to the extent of the grant made to Iowa by the act of the 8th August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, encumbered or appropriated, in a strip five miles in width on each side of said river, to be selected within said territory, etc., and the proceeds are to be applied in the improvement of the navigation of said river, from its mouth to the Raccoon Fork. Hence, the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa.

As the board has had no information that this opinion has been rescinded, we believe that you will be informed on the subject, at least within two weeks prescribed for the continuance of the sale.

Respectfully,

CHARLES CORKERY,
Secretary of Board of Public Works.

CHARLES NEELY, Esq.,
Register of Land Office, Iowa City, Iowa.

That on the 8th day of January, 1849, the Representatives in Congress from the State of Iowa addressed and forwarded to Hon. R. J. Walker, Secretary of the Treasury, a letter, of which the following is a copy:

CONGRESS, *January* 8, 1849.

SIR: During the last summer we were much surprised to see lands proclaimed for sale by the President of the United States which had been declared by the General Land Office, and considered by the people of Iowa, as the property of that State, under the act of 8th of August, 1846, "granting certain lands to the Territory of Iowa, to
72 aid in the improvement of the navigation of the Des Moines River in said Territory."

On inquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork; but no official promulgation of this opinion has yet been given, except negatively, by proclaiming the lands as above mentioned.

The granting clause in the act of August 8th, 1846, is so clear, that we are constrained, by due regard to the interests of the people and State of Iowa, to ask your consideration of the subject; and we are

further encouraged to take this course, as the Commissioner, we are assured, will be pleased to extend to the State the full compliment of the grant, if the law, in your opinion, should bear that construction. This act of August, 1846, is found in the acts of the first session 19th Congress, page 115.

The first part of the first section designates the object for which the grant was made, to wit, "There shall be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding the said Territory to improve the navigation of the Des Moines River, from its mouth to the Raccoon Fork (so called,) in said Territory."

The next clause describes the grant and its extent, to wit, "One equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, incumbered, or appropriated), in a strip five miles in width on each side of the river."

This language is so plain that the extent of the grant is a self-evident proposition, and requires no argument. But the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county sites, and the erection of public buildings, but in no case has it been contended that the object of the grant governs the extent of it; otherwise, the act passed by Con-
73 gress on the same day with that now in consideration (page 140), "to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin," must be construed as running the whole length of the Wisconsin River also, as the limitation of that grant to the Fox River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

The reason for this extension of the grant to Iowa above the terminus of the improvement is, moreover, manifest; because, near the mouth of the river, that improvement will be very expensive; and there the grant does not attach, because the lands on the Missouri side of the river, below Sullivan's line, are in Missouri, and those on the Iowa side are the property of individuals; and, further, most of the lands some distance up the Des Moines have been sold by the government; and, as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been sold that could be given are the vacant lands far in the interior from the Mississippi; and hence the terms used in the law.

As the terms of the act, then, are so clear and explicit, and as the reasons for the extension of the grant, as provided by that act, are so obvious, we respectfully request in our own behalf, and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified, that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty. We earnestly request that you will give the necessary instructions for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State, which have been inadvertently offered, and which remain unsold, may be withdrawn from the market, and certified to the State also.

74 We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPHERD LEFFLER.
WM. THOMPSON.

Hon. R. J. WALKER,
Secretary of the Treasury.

That on the 2nd day of March, 1849, the said R. J. Walker, Secretary, in answer to said letter of the Iowa Representatives in Congress, addressed and forwarded to them a letter of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in your views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, etc.,

R. J. WALKER,
Secretary of the Treasury.

Messrs. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

That on the same day (March 2, 1849), the said R. J. Walker, Secretary of Treasury, addressed an official letter to the Commissioner of the General Land Office, of which the following is a copy:

75 TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER,
Secretary.

R. M. YOUNG,
Commissioner.

That on the first day of June, 1849, R. M. Young, Secretary of the Interior, addressed and forwarded to the register and receiver of the United States land office at Iowa City an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *June* 1, 1849.

Register and Receiver, Iowa City, Iowa:

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withhold from sale all the lands situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

76 That in answer to said letter of R. M. Young, Commissioner, etc., the said register and receiver, on the 16th of June, 1849, addressed to said Commissioner a letter, of which the following is a copy:

LAND OFFICE, IOWA CITY, *June* 16, 1849.

SIR: Your letter of the 1st instant, directing us to withhold from sale the odd sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

HON. COM'R OF THE GENERAL LAND OFFICE,
Washington, D. C.

That said letter was received by said Commissioner of General Land Office, and is now on file in said office, and contains the following endorsement: "Acknowledges the receipt of Commissioner's letter of the 1st instant, directing the odd sections above the Raccoon Fork to be withheld from sale."

That on the 21st of June, 1849, the register at Iowa City forwarded to Commissioner of the General Land Office the lists called for by, and in his letter of June 1st, 1849, enclosed in a letter, of which the following is a copy:

REGISTER'S OFFICE, IOWA CITY, IOWA, *June* 21, 1849.

SIR: I herewith transmit to you a list of the sales and locations of lands on the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant,

JESSE BOWEN, *Register.*

HON. COMMISSIONER OF THE GENERAL LAND OFFICE.

74 We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPHERD LEFFLER.
WM. THOMPSON.

Hon. R. J. WALKER,
Secretary of the Treasury.

That on the 2nd day of March, 1849, the said R. J. Walker, Secretary, in answer to said letter of the Iowa Representatives in Congress, addressed and forwarded to them a letter of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in your views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, etc.,

R. J. WALKER,
Secretary of the Treasury.

MESSRS. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

That on the same day (March 2, 1849), the said R. J. Walker, Secretary of Treasury, addressed an official letter to the Commissioner of the General Land Office, of which the following is a copy:

75 TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER,
Secretary.

R. M. YOUNG,
Commissioner.

That on the first day of June, 1849, R. M. Young, Secretary of the Interior, addressed and forwarded to the register and receiver of the United States land office at Iowa City an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *June* 1, 1849.

Register and Receiver, Iowa City, Iowa:

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withhold from sale all the lands situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

76 That in answer to said letter of R. M. Young, Commissioner, etc., the said register and receiver, on the 16th of June, 1849, addressed to said Commissioner a letter, of which the following is a copy:

LAND OFFICE, IOWA CITY, *June* 16, 1849.

SIR: Your letter of the 1st instant, directing us to withhold from sale the odd sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

Hon. COM'R OF THE GENERAL LAND OFFICE,
Washington, D. C.

That said letter was received by said Commissioner of General Land Office, and is now on file in said office, and contains the following endorsement: "Acknowledges the receipt of Commissioner's letter of the 1st instant, directing the odd sections above the Raccoon Fork to be withheld from sale."

That on the 21st of June, 1849, the register at Iowa City forwarded to Commissioner of the General Land Office the lists called for by, and in his letter of June 1st, 1849, enclosed in a letter, of which the following is a copy:

REGISTER'S OFFICE, IOWA CITY, IOWA, *June* 21, 1849.

SIR: I herewith transmit to you a list of the sales and locations of lands on the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant,

JESSE BOWEN, *Register.*

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

74 We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPHERD LEFFLER.
WM. THOMPSON.

Hon. R. J. WALKER,
Secretary of the Treasury.

That on the 2nd day of March, 1849, the said R. J. Walker, Secretary, in answer to said letter of the Iowa Representatives in Congress, addressed and forwarded to them a letter of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in your views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, etc.,

R. J. WALKER,
Secretary of the Treasury.

Messrs. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

That on the same day (March 2, 1849), the said R. J. Walker, Secretary of Treasury, addressed an official letter to the Commissioner of the General Land Office, of which the following is a copy:

75 TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER,
Secretary.

R. M. YOUNG,
Commissioner.

That on the first day of June, 1849, R. M. Young, Secretary of the Interior, addressed and forwarded to the register and receiver of the United States land office at Iowa City an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *June* 1, 1849.

Register and Receiver, Iowa City, Iowa:

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withhold from sale all the lands situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

76 That in answer to said letter of R. M. Young, Commissioner, etc., the said register and receiver, on the 16th of June, 1849, addressed to said Commissioner a letter, of which the following is a copy:

LAND OFFICE, IOWA CITY, *June* 16, 1849.

SIR: Your letter of the 1st instant, directing us to withhold from sale the odd sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

Hon. COM'R OF THE GENERAL LAND OFFICE,
Washington, D. C.

That said letter was received by said Commissioner of General Land Office, and is now on file in said office, and contains the following endorsement: "Acknowledges the receipt of Commissioner's letter of the 1st instant, directing the odd sections above the Raccoon Fork to be withheld from sale."

That on the 21st of June, 1849, the register at Iowa City forwarded to Commissioner of the General Land Office the lists called for by, and in his letter of June 1st, 1849, enclosed in a letter, of which the following is a copy:

REGISTER'S OFFICE, IOWA CITY, IOWA, *June* 21, 1849.

SIR: I herewith transmit to you a list of the sales and locations of lands on the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant,

JESSE BOWEN, *Register.*

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

That on the 19th of December, 1849, J. Butterfield, Commissioner of the General Land Office, addressed and forwarded to Jesse Williams, then secretary of board of public works, an official letter, of which the following is a copy:

77

GENERAL LAND OFFICE,
Dec. 19, 1849.

SIR: A letter has been received at this office from the Hon. A. C. Dodge and the Hon. Geo. W. Jones, inclosing one from you to the former, dated the 30th ult., requesting that you may be furnished with a list of the Des Moines River grant above the Raccoon Fork. In reply I have to state that said list has not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed on the books of this office until recently. Said list is now in course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say, "the lists heretofore forwarded of land below the Fork have been furnished the secretary of state, instead of the board, who are the rightful and only agents of the State for said land."

In the absence of evidence showing the right of another to receive confirmed lists of State grants, it is usual to send them to the secretary of state. Such is the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right, as secretary of the board of public works, to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

I am, sir, your obedient servant,

J. BUTTERFIELD,
Commissioner.

JESSE WILLIAMS, Esq.,
Iowa City, Iowa.

On the 14th January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior of the amount of land which had been granted to the several States, respectively, for purposes of internal improvement. In this report after a statement that the amount of lands charged to the State of Iowa, is 824,070 acres, occurs the following language: "This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March (1849), eighteen hundred and forty-nine, will be increased by the unadjusted
78 portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres."

On the 13th of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading: "No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, etc., under the decision of the Secretary of the Treasury, of March 2d, 1849."

On the 6th of April, 1850, the Secretary of the Interior, in answer to the letter of the Commissioner of the General Land Office, enclosing said lists, addressed to said Commissioner a letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, April 6, 1850.

SIR: Having considered the question submitted to me, connected with the claim of the State of Iowa to select under the act of August 8th, 1846, lands for the improvement or the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extended above the Raccoon Fork without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8th, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law, not having been carried into effect by him, his opinion merely expressed is open for reversion.

The lists of selections and other papers submitted with your letter of the 13th ult., are herewith returned.

As Congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the
79 State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

That on the 19th of September, 1850, J. Butterfield, then Commissioner of General Land Office, addressed to Millard Filmore, then President of the United States, the letter of which the following is a copy:

GENERAL LAND OFFICE, *September* 19, 1850.

His Excellencey M. Fillmore, President of the United States:

SIR: I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives, referred by you to this office, asking that the sale of the lands within twenty-five miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fairly carried out, that was recently passed by Congress, "granting the right of way, and making a grant to the State of Illinois, Mississippi, and Alabama, in aid of the construction of that road"; and, in accordance with your instructions, beg leave to report:

That so far as I have been able to examine the question, no authority has been specifically conferred upon the President by law to suspend the sale of lands in cases of this character, where they have been proclaimed and offered at public sale. It would appear, however, that he has always been considered as having that authority, by implication, from the nature of the duties devolved up him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President, I refer to a letter from this office to the register at Piqua, Ohio, on the 28th of September, 1828, and which is as follows, to wit:

"The President having been advised by the governor of Ohio
80 that the route of the canal from Dayton to Lake Erie, by the Maumee, will probably pursue the course of the Anglaise River from the head of some one of its branches to its mouth, he had directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the Anglaise on which the canal will most probably be located.

"With respect, etc.,

"GEO. GRAHAM.
"*Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land office at Green Bay on the 11th April, 1844, for reserving the lands along the Wisconsin and Fox Rivers, in anticipation of the passage of an act making a grant for the improvement of those rivers; and the reservation then ordered was extended by instructions to those offices of the 8th August, 1846, the day on which the law was passed by Congress making the grant.

In many other cases the same authority has been exercised, but to a less extent; the foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority; and as it has thus been exercised, and in the present case must of necessity be inferred to enable the Executive to secure to the States mentioned, and the general government, the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully recommend:

That instructions be issued to the land offices in Illinois to withhold from sale, or location of any kind, till further ordered by this office, all the lands belonging to the government within three full townships, or eighteen miles, on each side of the supposed line of this road; and that the land offices in Mississippi and Alabama be instructed to withhold in like manner all the lands within four full townships, or twenty-four miles, on each side of said route.

The lands can be suspended from sale much more conveniently
81 by townships than by any other given distance; and the reason for recommending the withholding of a less extent in Illinois than in the other States is that the lands in that State are more sought by actual settlers at this time than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

On the 15th of February, 1851, the Board of Public Works of the State of Iowa addressed and forwarded to the Commissioner of the General Land Office, the letter of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS.
Ottumwa, Iowa, February 15, 1851.

SIR: The undersigned Board of Public Works of the State of Iowa have been notified by our honorable Senators in Congress that the honorable Secretary of the Interior has intimated in advance of a formal decision in relation to the extent of the grant of lands made to the

Territory of Iowa by the act of Congress, approved August 8, 1846, that a difficulty might arise against the construction put upon said act by the State authorities, growing out of the supposed fact that the agents appointed under the Territorial government have not made the selection required by the act beyond the lands embraced in the diagram furnished by the General Land Office and returned to the same by Jesse Williams, one of said agents.

The present Board of Public Works, as well as their predecessors in office, have ever regarded the selections made by said agents as co-extensive with the grant and as not limited by the diagram alluded to, which only embraced the lands contiguous to the Des Moines River then surveyed. The selection in general terms of the odd sections was supposed to apply to all lands embraced in said grant as well as those surveyed at the time, as those thereafter to be surveyed, nor has any formal selection of the lands since surveyed been deemed necessary.

82 Both the former and present Board of Public Works have sold lands not embraced in said diagram, and lying below the mouth of Raccoon River, and lists of said lands have been furnished by the General Land Office and confirmed by the Secretary of the Treasury, and yet no selections of these lands has been made beyond that of the Territorial agents. To avoid, however, the difficulty suggested by the honorable Secretary of the Interior but not admitting that a selection of said lands has not been made in accordance with said act, we the undersigned hereby notify the Commissioner of the General Land Office that we have selected all the lands within five miles of the river Des Moines that are embraced within the odd sections from the mouth of said river to the source of the same, not embraced in the selection heretofore made by the Territorial agents, as granted to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory by the act of Congress of the 8th of August, 1846.

We also request to be furnished at as early a day as practicable, with a diagram and confirmed list of said lands lying above the Raccoon Forks, and as far up said river as the surveys have been completed.

We are, with high respect, your obedient servants,

WILLIAM PATTERSON, *President.*
JESSE WILLIAMS, *Secretary.*
GEORGE GILLASPY, *Treasurer.*

Hon. J. BUTTERFIELD,
Commissioner of General Land Office, Washington, D. C.

The foregoing letter of the Board of Public Works to the Commissioner of the General Land Office, now on file in the office of said Commissioner, contains the following endorsement:

SENATE, *March* 10, 1851.

A. C. DODGE.

Enclosed communication from the board of internal improvement, of the State of Iowa, reselect the odd-numbered sections throughout the whole extent of the grant of land made to the State of Iowa by act of 8th August, 1846.

83 On the 22d of February, 1851, the president and secretary of the said board of public works, sent to the Hon. A. H. H. Stuart, Secretary of the Interior, a communication by telegraph, of which the following is a copy:

KEOKUK, *February* 22, 1851.

To Hon. ALEX. STUART:

As agents of the State of Iowa, we demand all the odd sections of land within five miles of the Des Moines River, above the Raccoon Forks, for improvement of said river, as provided by the act of Congress upon that subject.

WM. PATTERSON,
President of Board of Public Works.

J. WILLIAMS, *Secretary.*

That the Secretary of the Interior approved the selection of the odd numbered sections, selected by the agents in behalf of the State, as stated in the foregoing letter of the Board of Public Works to the Commissioner of the General Land Office.

On the 14th of April, 1850, the Senators and Representatives in Congress from Iowa protested against the decision indicated by the said letter of Ewing, Secretary of the Interior, to Commissioner of General Land Office, and appealed therefrom to the President. He referred the question to the Attorney-General (Johnson), who, on the 19th of July, 1850, made his report, giving it fully as his opinion, that by the terms of the grant itself, it extended along the Des Moines River up to its very source.

Previous to the promulgation of this opinion, President Taylor died, and a new cabinet was formed, before any action was had upon the decision of Attorney-General Johnson. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney-General, Mr. Critt'nden, who, on the 3th of June, 1851, gave it as his opinion that the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, on the 26th of July, 1851, addressed a letter to the Commissioner of the General Land Office (enclosing
84 the opinion of Attorney-General Crittenden), of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney-General, dated the 30th ult., in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River, above Raccoon Forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then session of Congress may be continued to the end of the approaching session, in order to give the State the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

That after the date of this letter, Secretary Stuart consented to bring the whole matter before the President and cabinet, who arrived at the decision indicated in the following letter of Secretary Stuart to the Commissioner of General Land Office, of date of October 29th, 1851:

DEPARTMENT OF THE INTERIOR,
Washington, Oct. 29, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month.

I have reconsidered and carefully reviewed my decision of the 26th July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than an executive character, which must ultimately be determined by the judicial tribunals of the country, and although my own opinion on the true construction of the grant is unchanged, yet in view of the great conflict of opinion among the executive officers of the government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I
85 am willing to recognize the claim of the State, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary. You will please, therefore, as soon as may be practicable, submit for my approval such lists as may have been prepared, and proceed to report for like approval lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned.

Very respectfully, etc., etc.,

A. H. H. STUART,
Secretary.

The COMMISSIONER OF GENERAL LAND OFFICE.

On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury, of 2d of March, 1849, that such grant extended to the north boundary of the State.

List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant and one of those extending it above the Fork.

List No. 3, showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

DEPARTMENT OF THE INTERIOR,
Oct. 30, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being
86 expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision

of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

A. H. H. STUART,
Secretary.

That on the 1st of November, 1851, J. Butterfield, Commissioner of General Land Office, addressed and sent to V. P. Van Antwerp a letter, of which the following is a copy:

GENERAL LAND OFFICE,
Nov. 1, 1851.

To V. P. VAN ANTWERP, Esq., *Present:*

SIR: In compliance with the request contained in your letter of this date, to be furnished with lists approved by the Secretary of the Interior, of the lands granted to the State of Iowa by the act of Congress of the 8th of August, 1846, or such portion of them as can now be prepared, I herewith enclose certified copies numbered 1, 2, and 3 of said lists.

No. 1 shows the odd numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Fork, in the townships embraced in said list.

No. 2 shows the tracts sold within the above mentioned sections and parts of sections between the 24th of August, 1848, and the 16th of June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

No. 3 shows the residuary or vacant tracts, after deducting from list No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

You will perceive that list No. 3 only has been approved by the Secretary.

Very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

On the 16th of March, 1852, the Commissioner of the General
87 Land Office addressed and forwarded to the Register of U. S. Land Office, at Dubuque, Iowa, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16, 1852.

REGISTER, *Dubuque, Iowa:*

SIR: I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2d of March, 1849, and the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior, on the 10th inst., a copy of which has been sent to George Gillaspy, esq., register, etc.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

That on the same day (March 16), the Commissioner of the General Land Office indited and forwarded to George Gillaspy, register of Des Moines River Improvement, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16th, 1852.

SIR: In compliance with the request made in your letter of 5th February last, I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2d March, 1849, and of the Secretary of the Interior of 29th October, 1851; approved by the Secretary of the Interior on the 10th inst.

I am, very respectfully, your obedient servant,
J. BUTTERFIELD,
Commissioner.

GEO. GILLASPY, Esq.,
Register, etc., Ottumwa, Iowa.

88 On the 20th of April, 1852, Butterfield, Commissioner of the General Land Office, wrote and forwarded to register of U. S. land office, at Iowa City, an official letter of which the following is a copy:

GENERAL LAND OFFICE,
April 20, 1852.

REGISTER, *Iowa City, Iowa:*

SIR: I herewith transmit a list showing the vacant lands in the Iowa City district, in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August, 1846, as constructed by the Secretary of the Treasury, in his letter 2d March, 1849, and of the Secretary of the Interior, of 29th October, 1851; which have not heretofore been approved. Complete lists approved by the Secretary of the Interior, 10th March, were transmitted to the State register and to the register of land office, at Dubuque, on the 16th ult.

I am, very respectfully, your obedient servant,
J. BUTTERFIELD,
Commissioner.

On the 23d of August, 1853, the Secretary of the Interior addressed the Commissioner of the General Land Office an official letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, August 23, 1852.

SIR: I have examined the question involved in the appeal of the Hons. A. C. Dodge, Geo. W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office in relation to their application for the issue of patents on the sales and locations of portions of the odd-numbered sections along the Des Moines River above the Raccoon Fork, which had been made prior to the receipt by the district land officers of Mr. Secretary Walker's decision of the 2d March,

1849, and have to state that as I approved the selections above the Raccoon Fork with the express understanding that that approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to the receipt of Mr. Walker's de-
89 cision, the issuing of patents on the sales and locations in question is in perfect accordance with the views expressed in my letter to the Commissioner, of the 29th of October last, and the terms of approval of the selections on the following day.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART,
Secretary.

The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE.

That on the 2d December, 1853, the Acting Commissioner of the General Land Office addressed and forwarded to George Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
Dec. 2d, 1853.

SIR: Assisted by the information contained in your letter of the 7th ult., I have ascertained that there are a number of tracts of land selected by the State of Iowa under the 8th section of the act of 4th September, 1841, situated within the limits of the Des Moines River grant under which (the grant) the State is entitled to them, and you are advised that when the grant is adjusted, which will be in a short time, so far as the surveys have progressed, the approval of the selections so situated will be rescinded and the State authorized to select others in lieu thereof.

You are again advised that the books and files of this office show no military reservation on section 19, 89, N. 28 W., and upon enquiry at the War Department it appears that there has never been any order to reserve it. It will therefore be certified to the State under the Des Moines grant.

I am, very respectfully, your obedient servant,

CHAS. S. FRAILEY,
Acting Commissioner.

GEO. GILLASPY, Esq.,
Ottumwa, Iowa.

That on the 13th of July, 1848, there were approved to the State of Iowa, by R. J. Walker, Secretary of the Treasury, under said
90 grant of August, 1846, lands lying below the Raccoon Fork to the amount of 321,028.03 acres, 53,473,17 acres of which were by the State conveyed to the Des Moines Navigation and Railroad Company, the balance thereof having been disposed of by the State and its board of public works prior to June 9th, 1854.

The following amounts of land were, at different times, approved and certified to the State of Iowa, under this grant, all lying above the Raccoon *Fork*:

October 30th, 1851	81,707.93	acres.
March 10th, 1852	143,908.37	"
December 17th, 1853	33,142.43	"
December 30th, 1853	12,813.51	"
	271,572.24	

212,636.31 acres of which were, by the State, conveyed to the Des Moines Navigation and Railroad Company, the balance, 58,932.93 acres, having been sold by State and its board of public works prior to the contract between the State and said company, June 9th, 1854.

Among the lands so certified and approved were the lands mentioned in the pleadings in this suit.

The following is the heading of the list, which was approved by the Secretary of the Interior on the 17th December, 1853, together with the terms of approval; a similar heading and approval was appended to the list approved on the 30th of the same month: "A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved."

Which list was approved in these words:

DEPARTMENT OF THE INTERIOR,
Dec. 17, 1853.

The selections in the within list are hereby approved to the
91 State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND,
Secretary.

TOWNSHIP 87 NORTH, OF RANGE 27 WEST.

<table>
<tr><td>46, 52
A</td><td>46, 58
A</td><td>46, 64
A</td><td>46, 70
A</td></tr>
<tr><td colspan="4">Des Moines River grant.
A—80 Sec. 1. A—80</td></tr>
<tr><td colspan="2">Des Moines River grant.
160
A</td><td colspan="2">52, 90
Cash
River grant
A—160</td></tr>
</table>

The north half of section and east half of southeast quarter, 426 44-100 acres, granted to State for Des Moines River improvement, per act 8th August, 1846. Approved 10th March, 1852.

The southwest quarter and west half of southeast quarter, 240 acres, granted to the State for Des Moines River improvement, per act August, 1846. Approved 30th December, 1853.

The northeast quarter of southeast quarter, 40 acres, entered by Wm. T. Woolsey, January 5th, 1867, $1.25 100 per acre. Cash certificate No. 5290.

We also find there has been two eras'es each, on the southwest quarter and west half of southeast quarter of the above sections, but cannot determine what the marks were that have been erased.

U. S. LAND OFFICE, FORT DODGE, IA.,
October 31st, 1871.

We hereby certify that the above is a true copy and abstract of section 1, township 87, range 27 west, as shown by the records and plats of this office.

E. C. BYAM, *Register.*
WEBB VINCENT, *Receiver.*

92 North half of section and east half of southeast quarter of section 1, township 87, range 27; acres, 426 44-100. Granted to State for Des Moines River improvement, per act 8th August, 1846. Approved 10th March, 1852.

North half of section and east half of southeast quarter of section 1, township 87, range 27; acres, 426 44-100. D. & S. C. R. R.. Approved April 7th, 1863. No. of certificate, 34.

Northeast quarter of southeast quarter of section 1, township 87, range 27; acres, 40, $1.25 per acre. Purchase money, $50. Wm. T. Woolsay. Approved Jan. 5th, 1867. No. of certificate, 5290.

Southwest quarter and west half of southeast quarter of section 1, township 87, range 27; acres, 240. Granted to the State for Des Moines River improvement, per act of August 8th, 1846. Approved 30th December, 1853.

U. S. LAND OFFICE,
Des Moines, Iowa.

I, F. G. Clarke, register of the United States land office at Des Moines, Iowa, hereby certify the above and foregoing is a true and correct copy of entries relating to section 1, township 87 north, range 27 west, on tract-book number 4, at page 229. A record kept on file in this office.

Given under my hand the 20th day of October, A. D. 1874.

F. G. CLARKE, *Register.*

GENERAL LAND OFFICE,
Jan. 6th, 1852.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of tracts falling to the State of Iowa under act of the 8th August, 1846, is a true and literal exemplification from the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOHN WILSON,
Commissioner of General Land Office.

93 *A list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the act of September, 1841, on the 20th of July, 1850, and erroneously approved 20th February, 1851, previous to the adjustment of the grant and before it was known that they belonged to the State under the Des Moines River grant.*

Tracts.	S.	T.	R.	Quantity.	Remarks.—Embraced by list.
W. ½ of SW.	5	87	26	80	No. 49
All	7	87	26	597. 92	No. 49
N. ½	9	87	26	320	No. 49
S. ½	15	87	56	320	No. 49
All	19	87	26	609. 18	No. 49
N. ½	21	87	26	320	No. 49
W. ½	23	87	26	320	No. 49
NW. ¼	27	87	26	160	No. 49
W. ½ of NE., E. ½ of NW., W. ½ of SE. and E. ½ of SW	29	87	26	320	No. 51
All	31	87	26	605. 92	No. 51
N. frl. ½ of NW. ¼ and lots 1, 2, 3, 4	1	86	27	241. 56	No. 51
S. ½	11	86	27	320	No. 51
SW. ¼ and W. ½ of SE. ¼	1	87	27	240	No. 53
NE. ¼	7	87	27	160	No. 53
N. ½	9	87	27	320	No. 53
E. ½	11	87	27	320	No. 53
All	13	87	27	640	No. 52
				5, 894. 68	
Lots 3 and 4	15	87	25	113. 90	No. 52
All	19	87	26	618. 40	No 51
NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE ¼ and lots 4, 5, 6, 7, 8	23	87	27	475. 50	No. 52
NE. ¼, E. ½ of NW., NW. of NW., N. ½ of SE., SE. of SE., and lots 1, 2, 3, 4, 5.	25	87	27	604. 25	51 & 52
W. ½	27	87	27	320	No. 51
All	29	87	24	640	No. 51
All	31	87	27	626. 44	No. 51
E. ½	33	87	27	320	No. 51
94 W. ½ of NE., SE. ¼ and E. ½ of NW. ¼.	31	88	27	320	No. 53
SE. ¼	3	87	28	160	No. 50
NE. qr	11	87	28	160	No. 50
E. ½ of SE., NW. of SE. and lots 1, 2, 3	5	88	28	252. 44	No. 50
W. h'f and NE. qr	7	88	28	468	No. 50
E. h'f and N. h'f of NW. qr	11	88	28	400	No. 54
SW. qr	13	88	28	160	No. 54
W. h'f of SW. qr	17	88	28	80	No. 50
E. h'f of NE. qr	19	88	28	80	No. 50
S. h'f	21	88	28	320	No. 50
E. h'f	25	88	28	320	No. 53
N. h'f and SE. qr	33	88	28	480	No. 50
				6, 918. 93	
Am't bro't over				5, 894. 58	
Acres				12, 813. 51	

DEPARTMENT OF THE INTERIOR, *Dec.* 30, 1853.

The sections embraced in the within list are hereby approved to the State of Iowa, under act of August 8, 1846, without prejudice to the rights, if any there be, of other parties.

R. MCCLELLAND,
Secretary.

Articles of incorporation of the Des Moines Navigation and Railroad Company.

DES MOINES NAVIGATION AND RAILROAD COMPANY,
Ottumwa, June 22, 1854.

I certify that the annexed paper, marked A, is a true copy of the "articles of incorporation" of the "Des Moines Navigation and Railroad Company," (a corporation formed under the code of Iowa,) of which

"article" a record is made in the recorder's office of Wapello County, and a publication made in the "Courier" newspaper, published in Ottumwa, the copy hereto annexed being designed for record in the secretary's office of the State of Iowa, as required by the code.

A copy of the seal of the company is hereto annexed (above).

HENRY O'RIELLY,
Secretary of the Des Moines Navigation and R. R. Co.

95 *A, referred to in the foregoing certificate—Article of incorporation under the new code of Iowa.*

In pursuance of the provisions of chapter forty-three of title ten of the code of Iowa, entitled "Corporations for pecuniary profit," approved February 5th, 1851, the undersigned and their associates adopt the following article of incorporation, to wit:

1. The principal object and business of the corporation hereby intended, is to improve the navigation of the Des Moines River by means of dams, and locks, and canals, and otherwise as may be deemed expedient and proper to effect the object, and to construct railroads connected with or separate from the same, as may be deemed advisable.

2. The corporation name shall be the "Des Moines Navigation and Railroad Company."

3. The capital stock of the company shall be three millions of dollars; its principal place of transacting business—Ottumwa, with an office, if necessary, at Keokuk, Fort De Moine, and New York, or either, as notice shall be given. The shares of stock representing the said capital and the corporate property of the said company, to be one hundred dollars each, transferable as provided in the by-laws of the said company, five per cent. to be paid on subscription, and subject to calls from time to time as may be necessary in transacting the business of the said company, and as provided for in the by-laws of said company.

4. The corporation to commence on the sixth day of May, 1854, and to continue for fifty years from that date unless sooner dissolved under and in pursuance of the laws of the State of Iowa.

5. The highest amount of indebtedness or liability which the said corporation shall at any time subject itself, shall not exceed two millions of dollars.

6. The private property of stockholders or members of the corporatian shall not be liable for corporate debts.

7. The officers or persons who shall conduct the affairs of the company shall be the president and board of directors of the said company.

96 8. The directory shall consist of nine persons. The first directors shall hold their offices respectively for one year from the first day of July, 1844, after which time they shall be elected by the stockholders annually.

9. In case of resignation or death of any director, or of vacancy from other causes the remaining directors shall fill the vacancy for the remainder of the term.

10. The president and secretary to be designated by the board of di-

rectors, and to hold the said offices during the term of office of a director.
Dated May 6, 1854.

(Signed) ORVILLE CLARK.
JOHN STRYKER.
EDWIN C. LITCHFIELD.
B. C. WITTEMORE.
PORTER KIBBEE.
HENRY TEN EYCK.
HENRY O'RIELLY.
NELSON P. STUART.
E. B. LITCHFIELD.
A. HUNT.

Filed July 7, 1854.

GEO. W. McCLEARY,
Secretary of State.

On the 9th day of June, 1854, the State of Iowa, by its duly authorized agents, entered into a contract with the Des Moines Navigation and Railroad Company, as follows:

Articles of agreement made and entered into this 9th day of June, 1854, by and between the Des Moines Navigation and Railroad Company, a corporation formed under the laws of the State of Iowa, party of the first part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River Improvement, by and with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners, in the State of Iowa, and in behalf of the State of Iowa, party of the second part, witnesseth:

97 That, whereas the commissioners before named have heretofore entered into an agreement with Henry O'Reilly, bearing date the 17th day of December, eighteen hundred and fifty-three, and an additional and explanatory agreement, dated April 18th, 1854, for the completion of the Des Moines River improvement; and which said agreements, contracts, and all rights of said Henry O'Reilly, by and with the consent and approval of both parties thereto, have been assigned and transferred to and for the benefit of the Des Moines Navigation and Railroad Company; and in pursuance of a stipulation of the said party of the second part, made simultaneously with said agreements, and to carry the same fully into effect.

The said parties for the purpose of simplifying and more fully explaining the said contracts and agreements, the said Des Moines Navigation and Railroad Company, of the first part, and the said Josiah H. Bonney, commissioner, with the consent and approval of Uriah Biggs, and George G. Wright, assistant commissioner, of the second part, hereby enter into the following agreement:

First. The said party of the first part doth hereby covenant and agree, to and with the party of the second part, for the consideration hereinafter named, to make and finish the Des Moines River Improvement, from the Mississippi River to Raccoon Forks, on said Des Moines River. The said improvement to be made according to the plan and specifications of the engineer of said improvement, heretofore made and determined upon, as to style, character, and quality of work, from the town of Saint Francisville, on said river, to said Raccoon Forks, except that the said party of the first part may improve the character and style of the work, and enlarge the size of the locks, as hereinafter provided; and so far as relates to the said work below the said town of St.

Francisville, the same shall be done and completed upon such plan as may be determined upon by the engineer employed on said work, in connection with Wm. J. McAlpine, late State engineer of the State of New York, as consulting engineer, or such other consulting engineer as the said party of the first part shall select for that purpose; pro-
98 vided that all said work shall be done and completed in a substantial manner, so as to secure the navigation of said river to the fullest extent, and for the longest period each year practicable; and provided, further, that the said party of the first part shall not be required to expend below the said town of St. Francisville, in said improvement, more than the sum of three hundred thousand dollars; and provided, also, that during the progress of the work, the said party of the first part, their successors or representatives, by and with the consent of the engineer in charge of the work, may alter or change the style and character of the work, or locations of either of the locks, dams, canals, or all of them, or any part thereof; provided no change shall be made authorizing an inferior kind of work, or the use of less valuable materials, or lessening the capacity of said locks, or of any piece of canal necessary for the use of any of said locks, or diminishing in usefulness or value the said general improvement; and in case of any disagreement between the engineer in charge of said work and the party of the first part, or their successors, in reference to the proposed sites or locations, or modes of constructing the locks, dams, or otherwise, the matters in difference shall be submitted for arbitration to a consulting engineer, or other person to be agreed upon by both parties to this contract, whose decision upon the points submitted shall be conclusive upon all parties.

Second. The said party of the first part further agrees to and with the party of the second part, to complete all said work from the river Mississippi to said Raccoon Forks, on or before the first day of July, 1858; and in like manner undertakes and covenants to complete at least one fourth part of said work each and every year, commencing on the first day of July, 1854.

Third. The said party of the first part doth further covenant and agree with the said party of the second part to pay and discharge any and all debts of every kind and description outstanding against the said Des Moines River Improvement on the 23d day of December last, within ninety days from the date of this contract; provided that the whole amount of said debts shall not exceed the sum of sixty
99 thousand dollars; and to meet and discharge said liabilities, the said Des Moines Navigation and Railroad Company have deposited with and paid over to the said Josiah H. Bonney, commissioner, the sum of fifty-five thousand dollars; and it is hereby agreed that the said party of the first part shall have and is hereby entitled to all moneys due and owing to the said improvement from the general government, and all claims and demands against the said general government, and all sums of money due from any other source, as also all sums of money now in the hands of said register, or that were in his hands on the 17th day of December last, or that may have been received by him, or have been in his hands on account of said improvement, at any time since the said 17th day of December, 1853; and the said sums of money in the said register's hands on the said 17th day of December, or that may have been in his hands at any time since, may be applied to the payment of any portion of the above-named debts, or for any debts incurred since the 17th day of December, in prosecuting

the said improvement, and shall be, by the said register, accounted for to the *the* said Des Moines Navigation and Railroad Company.

Fourth. All claims by mill owners or other persons for damages or rights of way, or other necessary privileges in the prosecution of said work, as well as other claims for damages, shall be settled for by the said party of the first part, and on such terms as they may deem best; and the title to all such rights of way so procured shall be taken and vest in the State of Iowa, subject to the rights of the party of the first part therein, as in this contract mentioned; and all work now progressing under contracts existing on the said 17th day of December last, at the dams and locks at Belfast, Farmington, and Keosauqua, shall progress and be carried on under and according to the terms of the respective contracts then existing in relation thereto, if the said contractors shall so elect, and shall be paid for by the said party of the first part, on the estimates made by the engineer, from time to time.

Fifth. The said party of the first part doth hereby further agree
100 and covenant, that the salaries of the commissioner and register of said improvement, and the salaries of the engineer and such assistants as may be required in the prosecution of said work, shall by them be paid from time to time, as the same shall become due and payable; provided, that the salaries of the commissioner and register of said improvement shall not be greater than that now fixed by law, and the salaries of the engineer and assistants shall be such as may be agreed upon by said commissioner, by and with the advice and consent of the party of the first part.

Sixth. The said party of the first part further agrees and covenants, that in all cases where bona fide settlement was made on any of the lands belonging to said improvement, which were surveyed on the 24th day of January, 1853, the settlers on said lands so unsurveyed shall have the right to purchase at any time within one year, after said lands are surveyed, their said lands, under the rules and regulations establisned by the commissioner and register, at the rate of one dollar and twenty-five cents per acre; but no such settler or claimant shall be entitled so to purchase more than one hundred and sixty acres.

Seventh. The said improvement shall be prosecuted in such manner as not to unnecessarily impede the navigation of said river during the construction of said work; but in all cases the locks shall be constructed and finished so as to allow the passage of boats and other water craft, before any material obstructions shall be created by the erection of dams.

Eighth. The said party of the second part, on their part, hereby covet nants and agrees with the said party of the first part to sell and convey to the said party of the first part, in manner and upon the terms hereinafter provided, all of the lands donated to the State of Iowa for the improvement of the Des Moines River, by act of Congress of August 8, 1846, which the said party of the second part had not sold up to the 23d day of December, 1853; for which said lands the said party of the first part covenants and agrees, in manner and form as fixed by this agreement, to pay the sum of thirteen hundred thousand dollars.

101 Ninth. The said party of the second part hereby transfer and assign to, and hereby invest in, the said party of the first par any and all stone, timber, and all other materials of every description belonging to said improvement now remaining along the line of said work or elsewhere, and hereby give said party of the first part full power and authority to use and control the same as they may deem proper in connection with said improvement.

Tenth. The said party of the second part further covenants and agrees that the parties of the first part, their successors and assigns, shall, from the date thereof, have full possession and control of all locks and dams now completed, and shall from time to time, as each lock and dam is completed, have the control and possession thereof; and when the whole work is completed shall have the entire and exclusive possession and control thereof for forty years from the first day of July, 1858, and shall from this date have the right to control and receive as herein provided all tolls and water rents accruing from said improvement, and to make such contract or contracts or agreements, and fix such rates in relation thereto, as they may deem proper, provided always that this grant of said tolls and water rents is made subject to the following express conditions:

1st. That the tolls to be taken and received by the said party of the first part shall in no event exceed the rates of tolls allowed and chargeable on the Monongahela improvement, in the State of Pennsylvania, on the 5th day of February, 1851.

2d. All contracts now outstanding between the commissioner and register, or either of them, with reference to the water rents with any individual or individuals, shall be carried out by the said party of the first part. And nothing herein contained shall be so construed as to interfere with said contracts, but the money arising therefrom shall belong to and become the property of the said party of the first part, in the same manner as all other water rents as fixed by this contract;

3d. All moneys arising from said tolls and water rents on the entire work, after deducting the necessary contingent expenses attending
102 the superintendency of the locks, and the collection of said rents and tolls and the repairs of said works during the time fixed for the completion of said works, shall be reported to the register of Des Moines River improvement semi-annually, and shall be expended by the said parties of the first part in said improvement, but such sums shall not be taken into the estimates upon which lands are to be transferred to the party of the first part, but shall constitute a portion of the one million three hundred thousand dollars to be expended by the party of the first part, and of the aggregate sum expended by the party of the first part in said improvement.

4th. At the expiration of said forty years the said works shall revert to and become the property of the State of Iowa, and shall be in ordinary repair for their respective uses.

Eleventh. The said party of the second part hereby covenants and agrees that whenever the said party of the first part shall have done work to the amount of thirty thousand dollars, according to estimates to be made by the acting engineer under the scale of prices fixed in this contract, the said party of the second part, or the then proper agent or officer or officers of the State, shall transfer and convey to the said party of the first part, or to the then register of said improvement, or such other person as the party of the first part may direct, an amount in value of the lands belonging to said improvement, valued at one dollar and twenty-five cents per acre, to the amount of said thirty-thousand dollars, deducting fifteen per cent., and so on in the same manner on each estimate of thirty thousand dollars, until work shall be done to the amount of thirteen hundred thousand dollars, if so much land shall remain unsold from and after the said 23d day of December, A. D. 1853, or until said work shall be completed. And upon the expenditure of said thirteen hundred thousand dollars, or the completion of said works, all of said lands remaining unconveyed, if any, shall be transferred and

conveyed to the said party of the first part, or their assigns, or to such person or persons as they shall direct. And all moneys paid by the party of the first part to the register of the Des Moines River Improvement or to the commissioner thereof in payment of the liabilities
103 resulting from the former prosecution of the work by the State of Iowa shall, without requiring any estimate to be made thereof by the engineer, be deemed to be a portion of the sums expended in the said improvement by the said party of the first part. And the said register shall convey to the party of the first part, or such person or persons as they shall designate, a quantity of land estimated at one dollar and twenty-five cents per acre, equal to the amount of cash thus paid; and the said sums thus paid shall form part of the thirteen hundred thousand dollars mentioned in this contract.

Twelfth. For the purpose of determining the lands which the said party of the first part shall have the right to select on the estimates made, as contemplated by the last section, it is agreed that, within a reasonable time after concluding this contract, the said party of the first part shall have all the unsold lands in this contract mentioned divided into three classes, according to value, and thereafter they shall take one-third of such amounts as they may from time to time be entitled to from each class. And for all moneys expended until such classification, they shall have the right to take such lands, as they remain unsold, commencing with the lands lowest down on the river, making no distinction in quality or value. And for the purpose of classifying said lands, unless a commissioner is mutually agreed upon, each party may choose or select a commissioner, who shall mutually agree upon such clasisfication. And in case of disagreement, the said two commissioners shall select a third, and the decision of a majority shall be conclusive. The expenses of said commissioner shall be defrayed by the party of the first part; and the records of such classification, duly certified by the said commissioners, or a majority of them, shall be filed with the register of the Des Moines improvement, for reference by and government of both parties under this contract. The river land office, for the sale of lands belonging to the Des Moines improvement, having, in accordance with the contract with Henry O'Reilly heretofore referred to, been closed on the 23d day of December last, the said office shall remain closed for the entry or sale of lands, excepting by the direc-
104 tion of the party of the first part.

Thirteenth. It is understood and agreed between the said parties, that in the conveyance of lands as contemplated by this contract, all moneys advanced by said parties of the first part, for salaries and pay of officers or agents or servants, for rights of way, damages to mill owners, and other matters not covered by actual work done on the improvement, shall be included in making estimates; but the moneys that were in the hands of the register on the 17th day of December last, and the value of the materials on hand (which shall be used), shall not be included for estimates.

Fourteenth. And it is also agreed and covenanted, between the parties hereto, that the following shall be the prices for the different items of work mentioned, upon which the engineer is to make his estimates, and by which the parties are to be governed in the conveyance of land, and other purposes contemplated in this agreement—adding twenty per centum to the aggregate amount of all estimates, to cover all contingencies, to wit:

Preparing lock foundation, $3,000.

Masonry in lock walls, $5 per perch.

Masonry in side walls, $3.50.
Hydraulic cement, $3 per barrel.
Lock gates and all fixtures, $2,500.
Square timber, 14 cents per foot.
Oak plank, $2.25 per 100 feet, board measure.
Crib filling in dams and abutments, $1 per perch.
Stone protection, riprap, $1.15 per perch.
Embankment around locks, 20 cents per yard.
Excavations on canals, where the dirt is wasted, 20 cents per yard; when the dirt is used in embankments, 15 cents per yard for the excavation, and 15 cents per yard for the embankment.
Round timber, 11 cents per foot.
Excavations for foundations, 40 cents per yard.
And all items not embraced and enumerated above shall be rated according to the estimates of the engineer in charge.

The engineer or engineers in charge of said work shall from
105 time to time, as shall be found convenient, be appointed by the joint assent of both parties hereto.

Fifteenth. All the work on said improvement during the progress thereof, shall be and remain under the general supervision of the board of public works and engineers, except as herein modified; and all works, as far as practicable, shall be so conducted as to perfect the navigation in a continuous line, from the mouth of the river upward to Fort Des Moines.

Sixteenth. That for the purpose of providing more effectually for securing the improvement of the Des Moines River to the greatest practical extent, and at the earliest practicable period, the party of the first part shall have the right to such tolls and water-rents as they can collect on the river above Fort Des Moines, for a similar period to that provided for the use of the river below Fort Des Moines under this contract; provided they shall, within eight years, at their own expense, improve the river so as to render it navigable for boats of at least two hundred tons burthen, to the Lizzard Forks or Fort Dodge, or to such other point above Fort Des Moines as they may find it practicable; provided further, that no higher average of tolls shall be charged on vessels or rafts, or articles transported, than the maximum allowed on the section of the river between the Fort Des Moines and the Mississippi River; and provided also, that at the end of said period in this section first named, the improvement on said upper region of the river, above Fort Des Moines, shall be surrendered to and become the property of the people of the State of Iowa, upon the payment to the party of the first part, or their successors, of such sum as the said improvement may be worth at the time, as determined by appraisers to be mutually agreed upon.

Excavation of rock under water, $2 per perch.
Excavation of rock above water, $1 per perch.
Iron bolts, spikes, and other irons, 8 cents per pound.
Seventeenth. The same right which is now or may hereafter be given by law to the said board of public works, to condemn lands in procuring rights

of way for the location of dams, locks, water-power, and canals,
106 shall be and is hereby given to the party of the first part; and in procuring the same they may, if necessary, use the name of the said board of public works, or that of the State; and the board shall assist therein, in accordance with the general spirit of this contract.

Eighteenth. The said party of the first part hereby covenants and agrees

that the State shall not be liable to them in this contract, but will look alone to the funds belonging to and arising from the said improvement, for compensation as hereinbefore mentioned; and the said party of the second part does hereby agree that the indebtedness named in the third section of this contract shall exceed the sum of sixty thousand dollars, the time for the use of said improvement by said company shall be extended one year beyond the time named in the tenth section of this contract, to wit, the first day of July, in the year 1899 (eighteen hundred and ninety-nine).

Nineteenth. The fifteen per cent. reserved in the conveyance of land by section eleven of this contract shall be esteemed and taken as part of the thirteen hundred thousand dollars agreed to be paid by the said party of the first part in this agreement.

In witness whereof the parties of the first part, by their president and secretary, have hereunto subscribed their names and placed their corporate seal; and the party of the second part, by the commissioners aforesaid, have also affixed their names and seals the day and year aforesaid.

{ OFFICIAL SEAL OF THE DES MOINES } ORVILLE CLARK,
{ NAVIGATION AND R. R. COMPANY. } *President.*
HENRY O'REILLY,
Sec'y of Des Moines Navigation and R. R. Co.
JOSIAH H. BONNEY, [SEAL.]
Com'r of Des Moines River Improvement.
URIAH BIGGS. [SEAL.]
GEO. G. WRIGHT. [SEAL.]

Supplemental agreement.

Whereas by the foregoing agreement bearing date the 9th day of June, instant, the Des Moines Navigation and Railroad Company of the one part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent
107 and approval of Uriah Biggs and Geo. G. Wright, assistant commissioners of the said improvement, of the other part, have contracted and provided for the completion of the said improvement from the mouth of the said Des Moines River to the Raccoon Fork, on the terms and according to the plans and specifications in the said contract provided; and it being deemed desirable to enlarge the said locks, and the capacity of such canals, as may be built in the prosecuting said improvement under said agreement:

Now, therefore, this additional and supplementary agreement, witnesseth:

That the said Des Moines Navigation and Railroad Company, of the first part, for and in consideration of the covenants herein contained, do covenant and agree with the State of Iowa, by the commissioner and assistant commissioners hereinbefore mentioned, to build the said locks provided to be built in the said agreement of the 9th of June, instant, two hundred feet long, in the same proportion that the present locks and plans provide for their being one hundred and seventy-five feet long; and that they shall be so constructed as to secure four and one-half feet of water on the lower mitre sill, and to secure a navigation of at least four and a half feet of water. And the canals shall be so constructed as to give at least four and a half feet of water, with suitable dimensions for boats or vessels navigating the same, with such depth of water at the locks and in the canals, and in all other respects the said

work is to be done under and in pursuance of the terms and conditions of the said contract of the 9th of June instant.

And the said party of the second part, the said State of Iowa, by the commissioner and assistant commissioners aforesaid, do covenant and agree with the party of the first part, that the said party of the first part shall have and enjoy the said work, its use, rights, and privileges, its tolls, water rents, and franchises, for the term of sixty years from the first day of July, 1858, fully and absolutely, as is provided in the said agreement of the 9th of June, instant, for forty years, and on the same terms as therein provided; saving and excepting that from and after the first day of July, (1918,) one thousand nine hundred and eight-
108 een, the said party of the first part shall pay into the treasury of the State of Iowa seven per centum of the nett amount of the tolls and water rents received on the said improvement, from the said Raccoon Fork to the mouth of the said Des Moines River, after deducting all expenses of repairs, superintendence, and other proper charges.

In testimony whereof, the said party of the first part, by their president and secretary, have hereunto subscribed their names and affixed their corporate seal; and the party of the second part, by the commissioners aforesaid, have subscribed their names and affixed their seals this ninth day of June, 1854 (one thousand eight hundred and fifty-four).

{ OFFICIAL SEAL OF THE DES MOINES NAVIGATION AND R. R. COMPANY. }

ORVILLE CLARK, *President.*
HENRY O'REILLY,
Sec'y of Des Moines Navigation and R. R. Co.
JOSIAH H. BONNEY, [SEAL.]
Com'r of Des Moines River Improvement.
URIAH BIGGS. [SEAL.]
GEO. G. WRIGHT. [SEAL.]

On the 6th of January, 1854, John Wilson, Commissioner of the General Land Office, addressed to George Gillaspy, esq., register of the State land office, an official letter of which the following is a copy:

GENERAL LAND OFFICE, *Jan.* 6, 1854.

SIR: Herewith I enclose a certified copy of a list of lands falling within the Des Moines River grant under act of 8th August, 1846, selected by the State of Iowa under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved the 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant, now approved by the Secretary of the Interior under the act of 8th August, 1846. The quantity of land embraced by the list is twelve thousand eight hundred and thirteen acres and fifty-one hundredths of an acre (12,813.51).

Thos. H. Benton, jr., esq., superintendent of public instruction,
109 has been advised that the State is authorized to select an equal quantity under the act of 1841, in lieu thereof.

I am, very respectfully, your obedient servant,
JOHN WILSON,
Commissioner.

GEORGE GILLASPY, Esq.,
Register State Land Office,
Ottumwa Iowa.

On the 6th of January, 1854, the Commissioner of the General Land

Office wrote to the superintendent of public instruction of the State of Iowa, as follows:

GENERAL LAND OFFICE,
Jan. 6, 1854.

SIR: Herewith I enclose a copy of a list of lands falling to the State of Iowa under the act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the townships embraced by the lists, which was approved by the Secretary of the Interior on the 30th ult. The quantity of land thus approved under the act of 8th of August, 1856, is twelve thousand eight hundred and thirteen acres and fifty-one hundredth of an acre (12,813.51).

These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

Be pleased to acknowledge the receipt of this communication.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

THOMAS H. BENTON, Jr., Esq.,
Superintendent of Public Instruction,
Iowa City, Iowa.

OFFICE OF SUPERINTENDENT PUBLIC INSTRUCTION,
Iowa City, Iowa, January 18, 1854.

DEAR SIR: I have just received a letter from the Commissioner of the General Land Office informing me that the approval of the
110 lands embraced in the enclosed list to the State for school purposes, amounting to 12,813.51 acres, has been revoked, and the lands confirmed to the State on the 30th December, 1853, as part of the grant for the improvement of the Des Moines River. You will therefore suspend all action in regard to any of the lands embraced in this list until further advised from this office; in the mean time I will correspond with the Commissioner and inform him how the matter stands. You will perceive that the fault is not mine. The lands were approved by the department at Washington as school lands, and upon the faith of that approval and the written assurance of the Commissioner that they did not interfere with the Des Moines River grant, I ordered them into market. This difficulty has grown out of the vexed question recently settled as to whether the Des Moines River grant extended above Fort Des Moines. My own impression is that the river grant will hold them and that the State will have to select other lands for school purposes. I do not believe, however, that it will work any injury to the persons who may have purchased or who have valid claims, as they will doubtless be permitted to purchase them as river lands if the present decision of the department stands. If I fail in my correspondence with the Commissioner in retaining them for school purposes, I will then instruct you to cancel the sales and refund purchasers their money, principal and interest. In the mean time you will let matters stand as they are till you hear from me again.

Yours, very truly,

THOMAS H. BENTON,
Sup't Pub. Inst.

JOHN TOLMAN, Esq.

OFFICE OF SUPERINTENDENT PUBLIC INSTRUCTION,
Iowa City, Iowa, Jan. 18, 1854.

SIR: Your favor of the 6th inst., enclosing a list of lands selected by the State of Iowa under the 8th section of the act of Congress of September 4th, 1841, has been received. You inform me that the approval of the selections embraced in the list (12,813.51 acres) has been revoked, and the lands confirmed to the State under the act of the 8th
111 August, 1846, for the improvement of the Des Moines River. In the early part of last year I requested the register of the land-office at Dubuque to forward me a duly authenticated list of the approved selections, which he did, embracing the lands in question. Knowing that the Des Moines River grant had been extended to the northern boundary of the State, and fearing that some trouble might arise in consequence of it, I withheld the lands from sale, and addressed a letter to the Commissioner of the General Land Office, under date of March 1st, 1853, requesting information as to whether any of the selections under the act of September 4th, 1841, "conflicted with the lands donated to the State for the improvement of the Des Moines River north of township 77." I received an answer under date of March 15th, 1853, informing me that the selections in the Dubuque district from list No. 1 to 97 inclusive, has been approved, and that "none of the selections rejected was in consequence of conflictions with the Des Moines River grant." With this double assurance, I considered the question as to what grant the lands embraced in the list enclosed in your letter of the 6th inst. belonged settled, and accordingly ordered them into market on the 6th of June, 1853. A large portion of them have been sold and the money invested for school purposes. To undo what we have done will be attended with much trouble and confusion in adjusting the accounts of the school fund with purchasers. I therefore beg leave to suggest whether any arrangement can be made by which the State can retain the lands under consideration as part of the selections under the act of September 4th, 1841, and make others under the act of August 8th, 1846, or an amendment to it. I have requested my friend, Hon. Bernchart Henn, one of our delegation in Congress, to confer with you on the subject. He can give you all the particulars concerning the two grants. In the mean time, I have instructed the agent intrusted with the sale of the lands to suspend further action until I receive your answer. I have the honor to be

Very respectfully, your obedient servant,
THOMAS H. BENTON, JR.,
Sup't Pub. Inst.

Hon. JOHN WILSON,
Com'r Gen'l Land Office, Washington City.

112 GENERAL LAND OFFICE, *Feb.* 2, 1854.

SIR: I am in receipt of your letter of the 18th ult. in reply to mine of the 6th ult., advising you of conflictions between selection under the act of 1846, granting lands for the improvement of the Des Moines River, and those under the act of 4th September, 1841, and that 12,813.51 acres approved to the State under the latter act actually belonged to the grant under the former. Your request that I would confer with the Hon. Bernhart Henn, and endeavor to effect some arrangement by which the State can retain those lands under the act of 1841. After a conference with Mr. Henn, I can perceive no way in

which that object can be attained by any action on the part of this office. It can only be by the action of the State legislation if at all. Regretting the embarrassment this occasions you,

I am, very respectfully, your obedient servant,

JOHN WILSON.
Commissioner.

THOMAS H. BENTON, JR.,
Sup't Pub. Inst., Iowa City, Iowa.

On the 6th of January, 1854, John Wilson, Commissioner of the General Land Office, addressed to George Gillaspy, esq., register of the State land-office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *Jan.* 6, 1854.

SIR: Herewith I enclose a certified copy of a list of lands falling within the Des Moines River grant under the act of 8th August, 1846, selected by the State of Iowa under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved the 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant, now approved by the Secretary of the Interior under the act of 8th August, 1846. The quantity of land embraced by the list is twelve thousand eight hundred and thirteen acres and fifty-one hundredths of an acre (12,813.51.)

113 Thomas H. Benton, jr., esq., superintendent of public instruction, has been advised that the State is authorized to select an equal quantity, under the act of 1841, in lieu thereof.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

GEORGE GILLASPY, Esq.,
Register of State Land Office,
Ottumwa, Iowa.

On the 6th of January, 1851, the Commissioner of the General Land Office wrote to the superintendent of public instruction of the State of Iowa as follows:

GENERAL LAND OFFICE,
Jan. 6, 1854.

SIR: Herewith I enclose a copy of a list of lands falling to the State of Iowa under the act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the townships embraced by the lists, which was approved by the Secretary of the Interior on the 30th ult. The quantity of land thus approved under the act of 8th of August, 1846, is twelve thousand eight hundred and thirteen acres and fifty-one hundredth' of an acre (12,813.51).

These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 39 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

Be pleased to acknowledge the receipt of this communication.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

THOMAS H. BENTON, JR., Esq.,
Superintendent of Public Instruction,
Iowa City Iowa.

On the 6th of January, 1854, the Commissioner of the General
114 Land Office addressed and forwarded to Geo. Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
Jan. 6, 1854.

SIR: Herewith I enclose a certified copy of a list of tracts falling to the State of Iowa under the act of 8th August, 1846, above the Racoon Forks, so called, so far as the surveys have progressed, and not heretofore approved, approved by the Secretary of the Interior on the 17th ult., amounting in the aggregate to thirty-three thousand one hundred and forty-two acres and forty-three hundredths of an acre (33,142 43-100).

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

GEO. GILLASPY, Esq.,
Register of State Land Office,
Ottumwa, Iowa.

That on the 7th of January, 1854, the Commissioner of the General Land Office addressed and forwarded to the register of the State land office, at Des Moines, Iowa, the letter of which the following is a copy:

GENERAL LAND OFFICE,
Jan. 7, 1854.

SIR: I enclose a copy of a list of the vacant lands in the odd numbered sections above the Raccoon Forks and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2nd March, 1849, and of the Secretary of the Interior, of the 29th October, 1851, approved by the Secretary of the Interior on the 17th ult.

The quality embraced by the list is 33,142.43 acres.

You will please have them entered upon your tract and plat books.

I also enclose a copy of a list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, on the 20th
115 July, 1850, and erroneously approved on the 20th February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State, under the Des Moines River grant.

The list was approved on the 30th ult., and embraced 12,813.51 acres.

You will please note these selections upon your plat and tract books, as approved under act of 8th August, 1846, and cancel the approval of the same as selections under the act of 4th September, 1841.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

REGISTER STATE LAND OFFICE,
Fort Des Moines, Iowa.

Name of purchaser.	Date of contract.	No. of lot.	Parts of section.	Sec.	T.	R.	No. of acres.	Price pr. acre.	Cash.	Credit.	
Evan Lewis	Aug. 27, 1853		SE. qr. of SE. qr	25	88	28	40	$1 25	$12 50	$37 50	Patented.
Jacob Kraus	Sept. 2, 1853		SE. of SE. E. hf. of SW. qr. of SE. qr	19	87	26	60	1 25	75 00	.....	
Roscow Royster	Aug. 18, 1853		W. hf. of SW	5	87	26	80	1 25	25 00	75 00	Money refunded.
William A. Scott	Aug. 18, 1853		SW. qr	7	87	26	140	1 25	43 83	131 00	Patented.
Jesse Goodrich	Aug. 20, 1853		E. hf. of NE	11	87	27	80	1 25	100 00	.....	
Wm. T. Woolsey	Aug. 20, 1853		W. hf. of SE. N. hf of SW	1	87	27	160	1 25	200 00	.....	
Thomas G. Pierce	Aug. 20, 1853		NW. qr	7	87	26	137.64	1 25	172 05	.....	Money refunded.
Robert Allcorn	Aug. 20, 1853		SE. qr. of NE. qr	13	87	27	40	1 25	50 00	.....	
John Tolman	Aug. 20, 1853		N. hf. of SE. qr	25	88	28	80	1 25	100 00	.....	
John Ware	Sept. 7, 1853		NW. qr. of SW. qr	17	88	28	40	1 25	12 50	37 50	
Perlonzo Bell	Sept. 9, 1853		W. hf. of NW. qr	31	87	26	62.68	1 25	78 37	.....	
Perlonzo Bell	Sept. 9, 1853	1, 2, 3 & 4	NE. qr. of NW. qr	1	86	27	204.92	1 25	255 89	.....	
Eleazer Russell	Sept. 19, 1853		NE. qr	7	87	26	160	1 20	50 00	150 00	
Francis W. Allen	Oct. 1, 1853		E. hf. of SE. qr	5	88	28	80	1 25	100 00	.....	
Francis W. Allen	Oct. 1, 1853		NW. qr. of SE qr	5	88	28	40	1 25	12 50	37 50	
John B. Skinner	Oct. 19, 1853		NW. qr. of SW. qr	19	87	26	32.37	1 25	10 12	30 56	
John B. Skinner	Oct. 19, 1853		NE. qr. of NE. qr	25	87	27	40	1 25	12 50	37 50	
John Gaylor	Nov. 12, 1853		W. hf. of NE. qr	7	87	27	80	1 25	25 00	75 00	Patented.
Isaac Murphy	Nov. 28, 1853		NW. qr. of SE	7	87	26	40	1 25	12 50	37 50	
Leander Boher	Nov. 28, 1854		W. hf. of SW. qr	11	86	27	80	1 25	25 00	75 00	
Solomon Bathler	Dec. 6, 1853		W. hf. of SE. qr	15	87	26	80	1 25	25 00	75 00	Patented.
Francis McGuire	Dec. 9, 1853	4	SE. qr	15	87	27	62.50	1 25	93 75	.....	
Ebenezer H. West	Dec. 12, 1853		S. hf. of SW. qr., W. hf. of SW. of SE. qr.	19	87	26	92.37	1 25	20 87	86 59	Money refunded.
Benjamin Corban	Dec. 12, 1853	1, 2, 4 & 5	E. hf. of NW. qr., NW. qr. of NW. qr.	25	87	27	302.05	1 25	94 37	283 30	Patented.
James Corban	Dec. 13, 1853		NW. of NE	25	87	27	40.00	1 25	12 50	37 50	Patented.
Samuel K. Barnes	Dec. 20, 1853		SW. qr	13	88	28	160.00	1 25	200 00	.....	
Isaac Murphy	Dec. 27, 1853		E. hf. of SE. qr. and SW. qr. of SE qr	7	87	26	120.00	1 25	37 50	112 50	
George C. Goss	Jan. 2, 1854		W. hf. of SE. qr	31	88	27	80.00	1 25	25 00	75 00	Money refunded.
Lodowick Maricle	Jan. 3, 1854	8	SE. qr. of SE qr	23	87	27	76.75	1 25	19 18	57 56	Patented.
David A. Eckerson	Jan. 4, 1854		NE. qr. of NW. qr	21	87	26	40.00	1 25	12 50	37 50	
Peter Byram	Jan. 7, 1854		E. hf. of SE. qr	15	87	26	80.00	1 25	25 00	75 00	
James Craig	Jan. 7, 1854		SE. qr. of SW. qr	29	87	26	40.00	1 25	50 00	.....	
Wesley M'Kinney	Jan. 10, 1854		NE. qr., E. hf. of NW. qr	31	87	26	240.00	1 25	75 00	225 00	Money refunded.
John Everhart	Jan. 10, 1854		S. hf	31	87	26	303.00	1 25	94 77	284 29	Money refunded.

OFFICE OF SCHOOL FUND COMMISSIONER, WEBSTER COUNTY,
October 23, 1854.

I hereby certify that this is a correct (copy) of all lands sold by me on odd sections as school lands in this county at the times the dates appear on the list.

JOHN TOLMAN,
School Fund Com., Webster Co., Iowa.

117 That on the 25th of January, 1855, the general assembly of the State of Iowa passed an act entitled "An act for the relief of settlers on certain river lands," the preamble to which, and the first and eighth sections whereof, are as follows:

An act for the relief of the settlers on certain river lands.

Whereas a large number of persons have contracted with the proper school officers to purchase lands as school lands, being part of the 500,000 grant, and have paid part of the purchase money down, and have entered upon the said land and made valuable improvements upon the same; and

Whereas the State of Iowa have located part of the grant for the improvement of the Des Moines River upon said lands thus purchased and settled upon; and

Whereas doubts have arisen as to the legality of said location:

Therefore, SEC. 1. Be it enacted by the general assembly of the State of Iowa, That the commissioner and register of the "Des Moines River improvement" be required to represent the facts stated in the foregoing preamble to the Des Moines Navigation and Railroad Company, and enter into negotiation with said company for the sale of said lands described in said preamble, to the persons who have contracted with the several school fund commissioners for the same, at one dollar and twenty-five cents per acre.

SEC. 8. That all money received for land sold under the provisions of this act shall be paid over to the proper officers of the Des Moines Navigation and Railroad Company.

That on the 10th of May, 1856, the Commissioner of the General Land Office sent to the registers and receivers of the several land offices in Iowa, by telegraph, a communication, of which the following is a copy:

GENERAL LAND OFFICE, *May* 10, 1856.

You will suspend from sale or location all the lands in your district until further orders.

118 Acknowledge the receipt of this dispatch by telegraph and mail.

THOMAS A. HENDRICKS,
Commissioner.

Registers and receivers, Council Bluffs, Iowa.
Dubuque, "
Chariton, "
Fort Des Moines, "

That on the 12th of May, 1856, the Commissioner of the General Land Office addressed to Hon. Geo. W. Jones a letter, of which the following is a copy:

GENERAL LAND OFFICE, *May* 12, 1856.

Hon. G. W. JONES, *U. S. Senate:*

SIR: In reply to the inquiries in your letter received this morning, I have to state, according to a hasty estimate at this office:

1st. That the lands along the Illinois Central Railroad were offered between the years 1816 and 1844, embracing a period of 28 years, as-

suming 14 years as the average, and adding 12, the term elapsed since 1844, we have the average term the lands have been in market 26 years, hence the price under the graduation act would be 25 cents per acre.

2d. See enclosed printed statement in Commissioner's annual report of November 30, 1854, pages 17 and 18, which shows as follows:

Sold within six-mile limits, 765,690 acres for $1,936,075, average price $2.54 per acre. Sold within fifteen miles including the above, 2,377,994 acres for $3,989,210, average price $1.68 per acre.

3d. The enclosed statement marked A shows the estimated length of the railroads and the amount which would accrue to the State under the bill.

I am, respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

119

A.

Iowa Railroad grants.

Routes.	Estimated miles.	Granted.
Dubuque, via Fort Dodge, to Iowa City.....	295	1,132,800
Lyons City, via Mauquoketa, due west to Missouri River.....	325	1,248,000
Davenport, via Iowa City, Fort Des Moines, to Council Bluffs	290	1,113,600
Burlington west to mouth of Platt River.....	255	979,200
Total	1,165	4,473,600
Deduct for Des Moines River grant, which crosses four times 10 x 4.....	40	153,600
Leaves	1,125	4,320,000

quantity to which the State would be entitled if to be had within the alternate sections within fifteen miles of the road.

Whole surface of Iowa is	32,584,960 acres.
Estimated vacant 30th September, 1855.....	13,874,163 "
Amount that would be liable for selection if the lands were all vacant 1,125 x 15 x 640 acres	10,800,000
Therefore as 32 : 13 : : 10,800,000--	4,387,500

The estimated amount vacant and liable to selection for the grant within the prescribed limits, and equal to the quantity granted. But the deficiency on one route cannot be made up on another; it is not possible, therefore, that the lands will hold out.

That on the 15th of May, 1856, the Commissioner of the General Land Office addressed to the register and receiver of the U. S. land office at Des Moines an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *May 15th*, 1856.

REGISTER AND RECEIVER,
Ft. Des Moines, Iowa:

GENTLEMEN: By my telegraph dispatch of the 10th inst., you were directed to suspend from sale or location all the lands in your district until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running

from the Mississippi River to the Missouri by a bill which had passed both houses of Congress.

120 Said bill having this day been approved by the President has become a law, and you will continue to withhold from sale or location until further orders.

It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may be returned to market.

I am, very respectfully, your obedient servant.

THOS. A. HENDRICKS,
Commissioner.

That on the 9th of June, 1856, the Secretary of the Interior addressed the Commissioner of the General Land Office an official communication, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
June 9th, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and enclose therewith several letters and arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney-General for his opinion upon the questions involved, I enclose a copy of such opinion furnished me under date of the 29th ult., and also a letter under date of the 5th inst. from the Hon. Reverdy Johnson (the attorney for the claimants under the grant) in regard to the conditions upon which subsequent approvals up to the limits of the State of Iowa are recommended by the Attorney-General to be made. In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney-General as contained in the paragraph near the close of such opinion, beginning with the words "I advise, therefore, that you propose to the State of Iowa and its *re*signs," and ending with "you can with safety award to them the residue of the claim up to the northern boundary of the State. It will be perceived from endorsement on Mr. Johnson's letter above referred to that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that

121 effect on the part of the department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval hereafter prepared for my signature on any list submitted, the fact should be stated that the approval being based upon the prior action of the department and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part in this limit and an abandonment of all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent in the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

To Hon. THOS. A. HENDRICKS
Commissioner of the General Land Office.

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney-General.

The Attorney-General (Cushing) replied to Secretary McClelland, in an elaborate opinion, dated 29th May, 1856, in the course of which he said:

"In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account;
122 no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided and done by the head of a department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's Opinion of Dec. 28, 1852; see, also, Bank of Metropolis vs. The United States, XV Peters, p. 400; Ex parte Randolph, II Brooken, p. 470.)

"If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States. * * * It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action as to the acts of a continuous nature.

"It might, with much plausibility, be argued that while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so, what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination, as respects any other lands in the same right claimed by the State, and that, in executing the same law you are to execute it according to your own understanding of its force and effect. That may be so, and yet the contingency is not exactly of the application of a precedent to a new case, for the grant to Iowa is one thing, although it be composed of parts or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above Raccoon Fork; and he proceeded to execute, and did execute, that decision in part. And the true question is, of the completion of the execution by you of what had been partially executed by Mr. Stuart. I think it must be a clear case of manifest illegality in the work
123 commenced and half executed by one Secretary to justify the abandonment of it by his successors. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions on the part of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart. In my judgment it is not for the good of the public service, while it is prejudicial and sometimes grossly unjust to private interests concerned, for the Executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that upon better reflection at the outset a different de-

cision would have been rendered. To indulge in such oscillation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the government.

"In the present case of lands above the Raccoon Fork claimable by the State within its limits twenty-six fifty-sixth parts—nearly half—the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question proper to be acquiesced in by you as a settled fact of administration." * * *

Subsequently, and on the 10th November, 1856, application was made by letter, through Hon. Reverdy Johnson, in behalf of the Des Moines Navigation and Railroad Company, to the Secretary of the Interior, to issue patents for the lands which had been certified and approved to the State of Iowa under the said act of 8th August, 1846, and by the State conveyed to said company, of which the following is a copy:

WASH'N, 10 *Nov.*, '56.

SIR: In the matter of the Des Moines River improvement grant, I applied in behalf of the comp'y, to whom the State assigned the lands granted by the U. States, to have patents issued for the selections made and duly approved of sections below and above the Raccoon Fork. I am aware that this of itself is supposed by your department to be sufficient to vest the title in the company, but in consequence of the different construction of the grant made by the U. States a cloud rests over such title, which, in a great measure, renders the lands unavailable.

124 This would be, perhaps, entirely removed if patents were issued, and it was with that view that I applied for them. It seemed to me that as no possible injury could result from their issue to the U. States, and the security of the grantees be made the better, and they enabled to dispose of the property to better advantage, that there could be no objection to the gratification of my application.

The general power to issue patents to give title to all lands in any way acquired from the U. States seemed to me to be clear, and this is an incident to the actual grant. That in this view no particular statutory authority need exist, and that if such authority was given in any case, it was but cumulative. Please consider the matter at your earliest leisure, and give me the result Should you not agree with me as to the patents, say if I am not correct in the opinion that the selections and approval pass the entire title of the U. States as effectually as patents would pass it.

With great regard, your obedient servant,

REVERDY JOHNSON.

Honorable Mr. MCCLELLAND,
&c., &c., &c., Washington.

To this application the Secretary replied as follows:

DEPARTMENT OF THE INTERIOR,
November 10*th*, 1856.

SIR: Having duly considered the subject brought to my attention personally a few days since, and specially referred to in your letter of this date, I have not been able to satisfy myself that the department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question; and the practice having been in accordance

with this view of the absence of authority, I deem it proper to adhere to it.

In the opinion of the Attorney General of the 29th May last, in the Des Moines River case, it is stated: "In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the government cannot undo that. What Mr. Stuart did in this
125 respect with deliberation, what you did without the question involved being suggested to you, was, in each case, done by the competent legal authority, and binds the government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account—no more right where a settlement is in favor of a third party than where it is in favor of the United States. Where a thing is decided and done by the head of a department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's Opinion of December 28th, 1852, MS. See, also, Bank of Metropolis vs. The United States, XV Peters, p. 400; Ex parte Randolph, II Brocken, p. 470.)

"If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States."

In the foregoing views of the Attorney-General I have concurred; and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment, like selections not yet approved.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

To Hon. R. JOHNSON, *Baltimore, Md.*

The General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846. Thereupon the said Des Moines Navigation and Railroad Company suspended the work upon said improvement, and afterwards said company and the State made a final settlement, as follows:

The general assembly of said State of 22d March, 1858, passed a joint resolution, as follows:

126 Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters and all matters and things between said company and the State of Iowa settled and adjusted: Now, therefore, be it

Resolved, by the general assembly of the State of Iowa, that for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, includ-

ing rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company; and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress approved August 8th, 1856, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company, or its assignees, shall have right to all of said lands as herein granted to them, as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or com-
127 pensation therefor by the General Government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not grated by the State to said company are 25,487 87-100 acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description prepared for or intended for the construction of locks or dams in said improvement, wheresoever the same may be; and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner the Des Moines River improvement (as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement) on thirty days' notice given to said company, at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: Provided, That no lia-
bilities assumed by the State in this contract shall be a charge
128 against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant; and provided also, that if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all liabilities as aforesaid against said improvements, and

the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines; and provided further, that if the said Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

Acceptance of the foregoing terms of settlement by the De Moine Navigation and Railroad Company.

OFFICE OF THE DE MOINE NAV. & R. R. CO.,
18 *William street, New York, April* 15, 1858.

At a meeting of the board of directors of the De Moine Navigation and Railroad Company, held at their office, in the city of New York, on Thursday, the 15th day of April, 1858, the following preamble and resolutions were adopted, to wit:

Joint resolution containing propositions for a settlement with the De Moine Navigation and Railroad Company.

Whereas the De Moine Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concern-
129 ing the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters, and all matters and things between said company and the State of Iowa, settled and adjusted: Now, therefore, be it

Resolved, by the general assembly of the State of Iowa, that for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of Dec., 1853, under said grant; and said company, or its assignees, shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false loca-

tions, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said com-
130 pany; and it is understood that among the lands excepted and not granted by the State to said company are 24,487 87-100 acres lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for or intended for the construction of locks or dams in said improvement, wheresoever the same may be; and the State shall take the existing contracts, but no other liabilities of any name or nature, excepting as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all claims against the State or the said improvement, or any of its officers or agents, arising from or growing out of any agreement or liability prior to the 9th day of June, 1854, and said company shall be discharged from all liability for the claims of the officers of the State for services or salaries. The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement (as fast as he may require the same, to liquidate the existing liabilities against said Des Moines River improvement) on thirty days' notice given to said company, at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars; provided, that no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and pay-
131 able out of the remaining lands belonging to the Des Moines River grant; and provided, also, that if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all liabilities as aforesaid against said improvements, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines; and provided further, that if the said Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secre-

tary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

(Signed) STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 22d, 1858.

RALPH P. LOWE.

Resolved, That the propositions and conditions of the above recited joint resolutions be, and they are hereby, ratified and accepted by the De Moine Navigation and Railroad Company, and that the president of the company cause a certified copy of this resolution, under the corporate seal, to be filed in the office of the secretary of state of the State of Iowa.

Resolved, That the president be, and he is hereby, authorized to execute, under the corporate seal of the company, the necessary and proper releases and discharges in conformity with the provisions and
132 conditions of the said joint resolutions of the general assembly of the State of Iowa, and to cause the same to be filed in the office of the secretary of state of the State of Iowa.

I hereby certify that the foregoing is a true copy of the resolutions of the De Moine Navigation and Railroad Company, adopted by the board of directors of said company at a meeting held on the 15th day of April, 1858, and duly recorded upon their book of minutes.

In witness whereof, I have hereunto affixed the corporate seal of the said company, together with my signature as its president, and have caused the same to be witnessed by the secretary of said company.

(Signed) R. S. BURROWS,
President De Moine Nav. & R. R. Co.

JAS. C. PATTERSON,
Secretary De Moine Nav. & R. R. Co.

EXECUTIVE CHAMBER, IOWA,
Des Moines, April 28, 1858.

To his excellency James Buchanan, President of the United States:

I, Ralph P. Lowe, governor of the State of Iowa, as required by act of Congress approved August 8th, 1846, "granting certain lands of the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory," do hereby certify that there has been expended from time to time prior to the date hereof, on the improvement of said river, as the work has progressed, and the money has been required under certain contracts made by the State of Iowa with the Des Moines Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four 4-100 dollars ($332,634.04), and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress, approved as aforesaid, there will be conveyed in said Des Moines Navigation and Railroad Company, two hundred and sixty-six thousand one hundred and seven 23-100 acres (266,107 23-100) of the land
133 belonging to said grant, and which have been certified and approved to the State of Iowa under said act for the prosecution of the improvement of said river of Des Moines.

In testimony whereof, I, Ralph P. Lowe, governor of the State of

Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.] RALPH P. LOWE.

By the governor,

ELIJAH SELLS,
Secretary of State.

And afterwards, the said State, on the 3d of May, 1858, executed and delivered to the Des Moines Navigation and Railroad Company a certain deed or patent, under the seal of the State, as follows:

This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company for the improvement of the Des Moines River, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following referred to and described lands, to wit:

(Here follows a description of several thousand acres of land, set forth specifically by sections, townships, and ranges, including the lands mentioned in the pleadings in this suit.)

To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and ap-
134 purtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

By the governor,

THE GREAT SEAL OF THE STATE OF IOWA. (Signed) RALPH P. LOWE.

(Signed) ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor, June 10, 1858, and recorded in Des Moines River Records, Book A, pages 41, 42, 33, and 44, June 18, 1858.

(Signed) T. S. PARRIN,
Register of the State Land Office.

By D. S. WARREN, *Deputy.*

On the same day the said State executed and delivered to said company several other similar patents under the seal of the State, and the aggregate amount of land described in and conveyed by all of said patents was 266,107.23 acres, of which about 58,830 acres were below, and the remainder above Raccoon Fork.

On the 18th day of May, 1858, said State also executed and delivered to the said company a deed and patent under the seal of the said State, of which the following is a copy:

This indenture, made this 18th day of May, one thousand eight hun-

dred and fifty-eight, by and between the State of Iowa, party of the first dart, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of a
135 joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following described lands, to wit, all lands granted by an act of Congress, approved August 8th, 1846, to the Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the general government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company or its assigns shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor, by the general government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges, under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that among the lands excepted and not granted by the State to said company are 25,488.87 acres, lying immediately above Raccoon Fork, supposed to have been sold by the general government but claimed by the State of Iowa.

To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

[L. S.] RALPH P. LOWE.

By the governor,

ELIJAH SELLS, *Secretary of State*,

By JOHN M. DAVIS, *Deputy*.

136 This is to certify that the foregoing deed was received from the governor June 10th, 1858, and recorded in Des Moines River records, book A, pages 45 and 46, June 18, 1858.

T. S. PARRIN,
Register of the State Land Office.

D. S. WARREN, *Deputy*.

Said State caused said patent to be duly recorded in Iowa, and also filed an original or copy of said patent in the office of the Commissioner of the General Land Office at Washington, with a list of the lands intended to be conveyed thereby, of which the lands mentioned in the declaration in this suit were part.

On the 3d day of March, 1857, the Commissioner of the General Land

Office addressed the following official communication to Hon. Bernhart Henn:

GENERAL LAND OFFICE, *March* 3, 1857.

SIR: In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to the Dubuque & Pacific Railroad Company in Iowa, under the act of Congress, approved 15th May, 1856, subject to the terms and conditions in said act and to the acts of the legislative assembly of said State, the following estimates carefully prepared at this office are communicated:

1. The length of the Dubuque & Pacific road and branch to Tete des Morts, measured on the official map of the route, is 331½ miles, which, at six sections, or 3,840 acres per mile, would make.... 1,272,960 acres.
Deduct for water..... 21,920 "

Leaves..... 1,251,040 "

to which the company would be entitled if found vacant in the odd numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant in the odd numbered sections within fifteen miles of the road and liable for selection (all situated in Iowa), is as follows:

137	In the Sioux City district.....	880,200	acres.
	" Fort Dodge "	415,360	"
	" Dubuque "	11,045	"
	Total.....	1,306,605	"

which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork within the fifteen miles limit of the railroad grant and not yet decided.

It appears, therefore, from the above, that the Dubuque & Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,040 acres.

I am, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. BERNHART HENN,
Agent of the State of Iowa and the Railroad Companies,
Washington, D. C.

That the general assembly of the State of Iowa passed an act which took effect April 14, 1858, of which the following is a copy:

An act appointing a commissioner to procure the lands granted for improving the navigation of the Des Moines River, to be certified to the State.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That Chas. Mason, of Des Moines County, is hereby appointed a commissioner, whose duty it shall be to do all acts in behalf of the State which may be necessary to procure the lands belonging to the grant made to the then Territory of Iowa, by an act of Congress approved August 8, 1846, for the improvement of the navigation of the Des Moines River, in said Territory, to be certified and set apart to said State by the proper department of the general government, and any act or agreement as to the amount of land to which the State may

be entitled under said act of Congress, made or completed by said agent, is hereby ratified and confirmed.

138 SECTION 2. That the State of Iowa shall not be liable in any manner for any damages growing out of any act or agreement of said agent hereby appointed, nor shall the State be held liable for any expense in any manner for the salary or per diem of said agent.

SECTION 3. This act to take effect and be in force immediately after its publication in the Iowa State Journal and Iowa Weekly Citizen.

Approved March 22d, 1858.

That as agent or commissioner of the State under the said act the said Charles Mason, on the 30th day of April, 1858, addressed to the Secretary of the Interior a communication, of which the following is a copy:

WASHINGTON, *April 30th*, 1858.

SIR: In our recent conversation relative to the settlement of the controversy in regard to the extent of the Des Moines River grant, you expressed a readiness to abide by the proposition of your immediate predecessor, founded upon the opinion of the late Attorney-General, dated May 29th, 1857. That proposition was that the decision of Mr. Secretary Stuart, of 29th October, 1851, founded on that of Mr. Walker's of March 2, 1849, should be adopted as final and conclusive. As agent for the State of Iowa, with full power over this subject, I am willing to accept this proposition thus far. But the late Attorney-General has arrived at a conclusion that this rule will confine the grant to the present limits of the State of Iowa, and one branch of the proposition presented by your predecessor has accordingly been, that the State should relinquish all claims to lands north of her present boundaries. Fully satisfied that a fair interpretation of the decisions of Messrs. Walker and Stuart would lead to no such conclusion, and that the opinion of the late Attorney-General in this respect was palpably erroneous, mainly in consequence of mistakes in regard to matters of fact, I desire this branch of the subject to remain open, and that I be permitted to show the truth of what I now state, in such a manner as you may think reasonable and proper.

139 The State of Iowa desires protection in all her just claims, and she will ask for nothing more. If upon a proder examination it be found that a fair construction of the decision of Mr. Stuart, founded on that of Mr. Walker's, will limit the grant to the present boundaries of the State, I will at once, on the part of the State, relinquish all claim to such lands as lie in Minnesota, and thus terminate this long controversy.

Yours, very respectfully,

CHAS. MASON,
Agent and Attorney for Iowa.

HON. JACOB THOMPSON,
Secretary of the Interior.

In answer to this letter the Secretary of the Interior, on the 8th of May, 1858, replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 8th, 1858.

HON. CHARLES MASON,
Agent of the State of Iowa:

SIR: I have to acknowledge the receipt of your communication of

the 30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor, of the 9th June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State. When it is considered that nearly two years have elapsed and no formal acceptance has in the meantime been presented here, if this be the only communication you have to make, I feel authorized to regard your letter, now before me, as an authoritative rejection of that proposition.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

On the 22d of March, 1858, the general assembly of the State of Iowa passed an act which took effect by publication April 7, 1858, the first section of which is as follows:

140 CHAPTER 99.

LAND GRANT TO THE DES MOINES VALLEY R. R.

An act disposing of the grant of land made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That all the lands granted to the then Territory of Iowa, by an act of Congress approved August eighth, eighteen hundred and forty-six, entitled an act granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory, and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber and other material turned over to the State by the Des Moines Navigation and Railroad Company in settlement with the State of Iowa, be and the same are hereby disposed of and granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, a body corporate created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peters River, excepting all the lands belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to the Des Moines Navigation and Railroad Company by virtue of a settlement now pending between the State and said company, and, also, so much of the said timber, stone and other material as may be used in the completion of the locks and dams at Croton, Plymouth, Bentonsport and Keosauqua, this grant to become operative so soon as Congress shall assent to or permit a diversion or the title thereto shall become vested in the State so as to be subject to grant.

In 1859 a petition from citizens of Iowa was addressed to the President, asking that certain specified townships of the lands
141 above the Raccoon Fork, which had been so approved to the State under the act of Aug. 8, 1846, should be brought into mar-

ket. In reply thereto, the Commissioner of the Land Office addressed to Senator Jones, of Iowa, the following letter:

GENERAL LAND OFFICE, *February 17th*, 1859.

SIR: I have the honor to acknowledge the receipt of the petition referred by you to the department, on the 12th inst., of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market, and in regard to the matter to state that the lands referred to by the memorialists are withheld from market in view of the grant to Iowa by act of August 8, 1846, to aid in the improvement of the Des Moines River.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. G. W. JONES,
U. S. Senate.

That on the 26th of March, 1859, the Secretary of the Interior addressed to the Commissioner of the General Land Office an official letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, March 26, 1859.

SIR: I transmit to your office herewith a copy of the opinion given on the 22d November last, by the Attorney-General of the United States as to the extent of the grant to the State of Iowa to aid in the improvement of the navigation of the Des Moines River, by the act of Congress approved August 8th, 1846, and also a copy of my communication of the 25th August, which elicited this opinion.

In the views of the Attorney-General as thus expressed I fully concur, and it therefore only remains for me to inform you that no future action can be taken in this department, or in your office, which will recognize the grant as extending above the Raccoon Forks of the Des Moines River.

142 Lists of selections which have been approved by my predecessors will be respected by your office.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

At the December term of the Supreme Court of the United States, in the year 1859, and on or about the 9th day of April, 1860, a decision was made by said court in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, which is reported in 23 Howard's Rept., 66 page.

When such decision became known at the General Land Office, the Commissioner on the 18th of May, 1850, issued and sent the register and receivers of the U. S. land office at Des Moines and Fort Dodge, Iowa, a printed notice of which the following is a copy:

No. 661.—*Notice respecting certain lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that

State above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved for the time being, from sale or from location by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona fide settlers holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May* 18, 1860.

Such notice was at once posted in a conspicuous place in said
143 land offices in Iowa, and so remained posted until the close of the year 1863, and in the office at Des Moines the same still remains posted.

On 25th May, 1860, Wm. T. Stieger, an agent in behalf of the Dubuque and Pacific Railroad Company, filed in the General Land Office a list of lands laying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15 May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines River grant by act of 8th August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the said fork, the present lists are presented by you. As the matter has been placed in train for Congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

Respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

Without passing upon, or, in fact, considering the question as to the right of the State under the railroad grant to these lands, which, at the date of the grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the department until after the close of the next session of Congress.

Respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

144 That on the 13th of August, 1860, the Commissioner of the General Land Office presented to the Secretary of the Interior a proclamation for the sale of public lands at the Fort Dodge and Sioux City offices, of which the following is a copy:

GENERAL LAND OFFICE,
August 13, 1860.

SIR: I have the honor to lay before you (No. 1) a proclamation of public lands in the Fort Dodge and Sioux City districts, Iowa, embracing 1,270,623 acres heretofore unoffered; the sales to be held as follows: At Fort Dodge, November 19, 1860. At Sioux City, November 26, 1860.

This (No. 1) proclamation embraces the lands in the yellow shades on the enclosed diagram A; also those in the blue shades. The blue shades are lands above the Raccoon Forks, which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shades and above the forks, which had been certified to the State under sanction of your predecessors, according to the then claimed limits of the Des Moines grant.

No. 2 is an alternate proclamation for 496,730 acres, excluding the blue shaded lands, and only embracing the yellow, and is submitted in case it should be decided to await action by Congress over the whole claimed extent of the Des Moines grant.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

Indorsement.

DEPARTMENT OF THE INTERIOR,
August 14, 1860.

Respectfully submitted to the President, with the recommendation that the lands be proclaimed for sale according to the form No. 1 enclosed.

J. THOMPSON,
Secretary.

145 (This proclamation was signed by the President under date of August 14, 1860, and afterwards advertised according to the printed form as proclamation No. 665.)

On the 6th of September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
Washington, Sept. 6th, 1860.

SIR: In the absence of any direct application by the governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines River, and the grants for aid of constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th July last, and 3d instant, are now returned.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On 3d November, 1860, the Secretary addressed a letter to Hon. Geo. W. Jones, Senator from the State of Iowa, in which he said:

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of the Dubuque and Sioux City Railroad Company, of the 1st instant, both relating to the certification to the State of Iowa of lists of odd numbered sections of land within the six and fifteen mile limits of the railroad "from the city of Dubuque to a point on the Missouri River near to Sioux City."

For your information I herewith enclose copies of my letters of the 6th September last, to the Commissioner of the General Land Office, and of the 1st of October, to Mr. Steiger, and in reply to your
146 letter would state that as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the latter grant, I deem it proper to suspend action at present so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress; and the State authorities still assert the equity of the title which has been recognized by my predecessors, though declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * * *

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

Hon. GEO. W. JONES, of Iowa, *Present.*

Extract from the report of Thomas H. Benton, jr., superintendent of public instruction, to the senate and house of representatives of Iowa, under date of June 6, 1854.

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION,
Iowa City, Iowa, June 6, 1854.

GENTLEMEN OF THE SENATE AND HOUSE OF REPRESENTATIVES: I beg leave to submit the following supplement to my biennial report of December 6, 1852. It is designed to embrace the business transacted subsequent to that date, and a partial recapitulation of the financial affairs of the school system from the 1st of April, 1847, to the 31st of March, 1854.

* * * * * * *

The following list, arranged from the plats above referred to, will show the number of acres selected and approved in the several counties:

Land selections.

A list of lands (commonly known as the 500,000-acre grant) selected for the State of Iowa under the 8th section of the act of Con-
147 gress of the 4th September, 1841, as approved by the Secretary of the Interior, as per the certificate of the Commissioner of the General Land Office, under date of September 12, 1854:

Counties.	Acres.
Adair	2,391.80
Adams	1,920
Alamakee	70,219.53
Appanoose	2,400
Benton	11,791.80
Boone	1,052.12
Blackhawk	8,382.84
Bremer	19,160.57
Buchanan	2,485.44
Butler	478.51
Cedar	6,285.42
Clarke	16,014
Clayton	22,817.02
Chickasaw	3,279.26
Clinton	20,941.35
Dallas	13,699.16
Davis	939.21
Decatur	40,637.48
Delaware	11,395.12
Dubuque	16,194.87
Fayette	30,747.85
Floyd	3,481.68
Hardin	1,360
Harrison	7,581.67
Iowa	23,976.17
Jackson	807.50
Jasper	1,674.94
Jones	30,467.48
Keokuk	670.64
Linn	11,046.07
Louisa	640
Lucas	640
Madison	9,686.02
Mahaska	6,227.75
Marion	1,414.61
Marshall	6,155.86
Monroe	986.57
Muscatine	357.33
Polk	6,151.46
Poweshiek	12,715.24
Ringgold	607.20
Story	3,796.74
Tama	11,651.42
Union	10,734.96
Wapello	7,041.57
Warren	1,918.13
Wayne	15,578.84
Webster	15,564.95
Winneshiek	24,449.18
Total	523,337.42

* * * * * * *

It is proper here to state that the selections made in Webster County (formerly Yell and Risley), amounting to 28,378.46 acres, were approved

on the 20th February, 1851, of which I was duly advised by the register of the land office at Dubuque. On the 1st of March, 1853, I addressed a letter of inquiry to the Commissioner of the General Land Office, as to whether any of the selections in question conflicted with the Des Moines River grant, to which (probably through a misapprehension of my inquiry) he returned a negative answer. Accordingly, on the 5th of June, 1853, I ordered the lands into market. Subsequently I received a letter from the Commissioner, under date of January 6th, 1854, informing me that the approval of the selections under the act of September 4th, 1841, in certain odd sections in townships 87-26 W., 86-7 W., 87-27 W., 88-27 W., 87-28 W., and 88-28 W., amounting to 12,813.51 acres, had been worked and the lands confirmed to the St ıte under the act of August 8th, 1846, for the improvement of the Des Moines River. I immediately
149 forwarded a list of the lands thus rejected to the school fund commissioner, John Tolman, esq., with instructions to make no further sales, and to forward me a statement of the lands sold in the above mentioned odd sections and townships up to that time. By this statement, which I have placed in the hands of my successor, it appears that 3,194.28 acres of the rejected lands were sold before the order was countermanded. I am informed that most of these lands are held and claimed by actual settlers, and in view of this fact, and the further consideration that the Des Moines River grant was about to pass into the hands of a private company, I determined not to have the sales cancelled, but to let them remain as orginally made, until the matter could be laid before you for such action as you might deem proper. I think it but an act of justice that these persons should be protected in their rights. The sales can be cancelled and the purchase money refunded under the direction of the superintendent of public instruction, to which the purchasers have no objections; but they ask some further guaranty of the State—that they shall be permitted to purchase them at the same price from the company for which they purchased them from the State. It is hoped, therefore, that you will give the matter such consideration as will secure the interests of all concerned. By deducting the lands thus rejected the number of acres left in the county will be 15,564.94, as presented in the several statements of this report.

* * * * * * *

I am, very respectfully, your obedient servant,

THOMAS H. BENTON, JR.,
Superintendent of Public Instruction.

Extract from the message of Ralph P. Lowe, governor of Iowa, to the general assembly, in January, 1860.

Justice to a large number of individuals demands that I should bring to your attention another subject connected with this—Des Moines River—grant. The agents employed by the State to select the
150 500,000 acre grant, among others, selected 12,813 51-100 acres of land, chiefly in Webster County, belonging to this river grant, which selections, with others, was approved February 20th, 1851. Col. Benton, at that time the State superintendent, with his usual caution and prudence, before ordering these lands into market, addressed a letter of inquiry to the Commissioner of the General Land Office whether any of the selections in question conflicted with the Des Moines River grant; this was in March, 1853. Receiving a negative answer, on the 6th of June of the same year he ordered the lands into market. In January thereafter he received another letter from the Commissioner to

the effect that the approval of the selections of these 12,813 acres had been revoked and confirmed to the State under the Des Moiner River grant. In the mean time the school fund commissioner of Webster County, under the order of sale, disposed of some 4,859 acres of this land by sale to actual settlers, who have improved and still occupy the same. Since then the State, under her contract for the improvement of the Des Moines River, has conveyed by deed these same lands to the Des Moines River Company, who now hold the legal title. In this condition of things what is to become of these settlers? It is true, perhaps, under the occupying claimant law, they may get the value of their improvements. But is this the measure of justice that should be meted out to them? They were purchasers in good faith; and although their misfortunes are the result of the lashes of the Federal officers rather than that of the State, yet simple justice demands, under the circumstances, that the State should at best do all it could to have these lands confirmed to them. This can now only be done by negotiation. I would respectfully suggest when any of these parties are unwilling to take a reasonable compensation for their improvements and surrender their lands, that if they will pay the Des Moines Navigation and Railroad Company the price for which the State sells other school lands, that then the State shall make up the residue of the purchase money to said company, either in cash or land, provided the purchase can be made of said company on just and reasonable terms. A special agent might be com-
151 missioned to effect the negotiation on this basis, properly restricted in his powers. At all events the whole subject is submitted to your better wisdom, earnestly expressing the hope that it will not be overlooked.

The following proceedings were had by the Iowa State senate under date of March 21, 1860:

Mr. Duncombe introduced senate file No. 198, a bill for an act making provision for the settlement of all liabilities of the State growing out of the sale of certain lands of the Des Moines River improvement grant, as school lands, accompanied by the following report. The bill was read the first and second time:

The select committee to which was referred the petition of four hundred citizens of Webster and Hamilton counties, asking for relief from the State in reference to lands which were selected as part of the 500,000 acre grant as school lands, and sold by John Tolman, school fund commissioner of Webster County, on the order of Thomas H. Benton, jr., and afterwards sold by the State to the Des Moines Navigation and Railroad Company, do report: That the State through its legally appointed agents did select the lands referred to in said petition as school lands, and did dispose of said lands, through the said school fund commissioner, under the order of the superintendent of public instruction, to actual settlers, most of whom still reside upon said lands, and many of whom have made valuable improvements upon said lands, and have expended large sums of money in making said improvements. That at the last session of the general assembly, in the settlement between the State and the Des Moines Navigation and Railroad Company, said lands were granted away by the State, and have since that time been patented by the State to said company without any reservation or provision for the settlers upon these lands. Your committee further find that if the general assembly refuse to pass an act for the relief of the settlers upon the lands aforesaid, that a large number of citizens of the State
152 will be deprived of their homes which they purchased of the

State in good faith, and that they will suffer great injustice and wrong by reason of the neglect of the State to make such provision as justice demands in behalf of her citizens. Your committee, therefore, report by bill and recommend its passage.

JNO. F. DUNCOMBE, *Ch'm.*
JNO. SCOTT.
J. J. WATSON.

On the 28th day of March, 1860, the bill passed the senate, and on the 30th day of March it passed the house of representatives, and was approved by the governor April 2d, and is as follows:

CHAPTER 63.

DES MOINES RIVER LANDS.

An act making provisions for the settlement of all liabilities of the State growing out of the sale of certain lands of the Des Moines River improvement grant as school lands.

Whereas certain contracts have been entered into between school fund commissioners, acting under the directions of "the superintendent of public instruction," an officer of this State, and citizens of the State, for the sale and purchase of a part of the school lands of the State, known as the 500,000 acre grant; and

Whereas the State of Iowa has, by a settlement with the Des Moines Navigation and Railroad Company, conveyed said lands in whole or in part to said company; therefore

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That upon the presentation (or proof of in case of loss) of any contract for the sale of any of said lands situated in Webster or Hamilton County, executed by John Tolman, late school fund commissioner of Webster County, or of any certificate of final payment from said school fund commissioner, or of any patent for said lands under any contract made by said school fund commissioner, to the governor
153 of the State, with proof satisfactory to him by the affidavit of the holder of said contract, certificate, or patent, as the case may be, or such other proof as he may require of the amount of money paid upon any tract or tracts of said land, he shall make a complete statement, showing the amount of money so paid, whether as principal or interest, and the time when each sum of money was paid, and upon the delivering up of any contract, certificate or patent, as the case may be, to the governor, or in case of loss, upon proper proof, he shall deliver the statement aforesaid, by him signed, to the holder of said contract, certificate or patent, as the case may be.

SEC. 2. Upon the presentation of said statement so made by the governor, as aforesaid, to the auditor of the State by the holder, the auditor shall audit the amount due as shown by said statement, with ten per cent. interest upon each sum so paid on said contract, certificate or patent, from the time of payment until the time said account shall be audited as aforesaid, and shall draw his warrant on the treasurer of State for the amount so audited.

SEC. 3. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be necessary to pay any claims to be audited under the provisions of this act.

SEC. 4. The contracts, certificates or patents, or in case of loss the proof of said contracts, certificates or patents, as returned to the governor, shall be filed in the office of the register of the State land office.

SEC. 5. No person holding any contract, certificate or patent for any of the lands aforesaid, sold by said commissioner, shall be required to present the same, as provided for under the provisions of this act, and no person presenting the same and receiving the money to be paid as herein provided shall be prohibited, in any manner, from receiving, under color of title or otherwise, for any improvements made upon said lands included in any contract, certificate or patent, as aforesaid, and
154 no person receiving money under the provisions of this act shall in any manner have any further claim on the State by reason of said contract, certificate or patent, and the receiving of the money as aforesaid, and making settlement with the State, as provided by this act, shall in no way prejudice any legal rights of the party so receiving it, which he may have against any other party, the State only excepted as aforesaid.

SEC. 6. Any person who may have made valuable improvements upon any of said lands patented to the Des Moines Navigation and Railroad Company by the State and before that time sold by said school fund commissioners, or the assignee of the person so making such improvements, may commence suit against said company, or the person claiming title under said company for the value of said improvements, and such person shall be entitled to receive the value of said improvements made before the passage of the act conveying said lands to said company from the party who is at the time of the commencemnet of such suit the owner of said land.

SEC. 7. This act to take effect and be in force from and after its publication in the Weekly Iowa State Register and Fort Dodge Sentinel.

Approved April 2, 1860.

Took effect by publication April 25, 1860.

That on the 3d day of November, 1860, the Secretary of the Interior addressed to S. J. Kirkwood, governor of Iowa, an official communication, an extract from which is as follows:

Again I would remark, that so far as any proposition for Congressional aid in behalf the State was brought to the notice of this department during the last session of Congress, it was confined, as I understood it, to that portion of the claimed lands which have been heretofore certified by my predecessors, and which has not been included in the lists of lands ordered into market. In respect to that class of lands, I had the honor, in a communication of the 11th of June last, addressed to Hon. R. W. Johnson, chairman of the Committee Public Lands of the United
155 States Senate, to recommend the report to that body, for adoption by Congress, the form of a joint resolution as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Forks thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8, 1846, be and the same is hereby relinquished to the State of Iowa."

You thus perceive that so far as my predecessors have acted under

the grant of August 8, 1846, I was willing to recommend a confirmation of that action by Congress. I cannot, however, go further. * *

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

That on the 2d of March, 1861, the Congress of the United States passed and adopted a joint resolution of which the following is a copy:

Joint resolution to quiet title to lands in the State of Iowa.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8, 1846, and which is now held by bona fide purchasers under the State of Iowa, be and the same is hereby relinquished to the State of Iowa.

Approved, March 2, 1861.

Up to the time of receiving said letter the General Land Office had continued to reserve "the lands lying along the Des Moines
156 River, in Iowa, within the claimed limits of the Des Moines grant, in that State, above the mouth of the Raccoon Fork of said river," in the manner and for the purposes mentioned in its aforesaid printed notice No. 661, dated 18th May, 1860. After receiving the said letter the Commissioner wrote to ex Governor Grimes, then a Senator from Iowa, as follows:

GENERAL LAND OFFICE,
April 15th, 1862.

SIR: I have the honor to enclose herewith a copy of the decision of the Secretary of the Interior, of the 10th instant, in the case submitted to the department in our letter of the 18th ult., a copy of which was furnished you in a letter of the same date.

Pursuant to said decision it is proposed to make out a list of lands enuring to the State for railroad purposes, under the act of 15th May, 1856, in so far as the six to fifteen mile limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa under the act of 8th August, 1846, for the Des Moines River improvement above the Raccoon Fork, irrespective of the certified lists to the latter, which are held to be invalid under the decision of the Supreme Court of the United States, at its December term, 1859.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. W. GRIMES,
United States Senate.

The governor of Iowa replied as follows:

EXECUTIVE OFFICE, IOWA,
May 6th, 1862.

J. M. EDMUNDS,
Commissioner General Land Office, Washington, D. C:

SIR: Yours of the 15th April last, covering copy of decision of Sec-

retary Smith, in regard to the effect of the grants of lands made to this State by the acts of August 8, 1846, and May 15, 1856, is at hand.

A portion of these lands was once certified to this State as school-lands, and the certification subsequently set aside because the department decided them to be covered by the act of 8th August, 1846.

157 They were then certified to the State under the last named act, and now that certificate is set aside because the lands were not covered by that act. They are now decided to be covered by the act of 1856. This State has sold portions of these lands as school lands, and as lands enuring to the State under the act of 1846, and the titles of many grantees of the State are involved in the present decision. I understand the question will be again brought before the Supreme Court of the United States, and my principal object in writing you is that this State may not lose her equitable claims for reclamation on the United States, in case the State suffers loss by reason of the failure of the title conveyed by this State under certificates from the United States.

Very respectfully, your obedient servant,

SAMUEL J. KIRKWOOD.

On 26th June, 1862, the said Commissioner of the Land Office wrote to the governor of the State of Iowa as follows:

GENERAL LAND OFFICE, *June* 26, 1862.

SIR: The attention of this office has been called to the condition of the lands in the region of the Des Moines River, above the mouth of the Raccoon Fork, which were claimed by the State of Iowa, under the act of 8th August, 1846, for the improvement of said river.

1st. The act of 1846, by the decision of the Supreme Court of the United States, at its December term, 1859, is restricted to the lands lying below the mouth of the Raccoon Fork, and the claim of the State to all lands above that point is abnegated.

2d. Under said decision of the Supreme Court the Secretary of the Interior has held that the alternate odd numbered sections falling within the six and fifteen mile limits of the railroad, where they traverse the region of the Des Moines River above the mouth of the Raccoon Fork thereof, would enure to the State under the act of 15th May, 1856, to aid in the construction of said roads.

3d. The joint resolution of Congress, of 2d March, 1861, declares "that all the title which the United States still retain in the

158 tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly, by the Department of the Interior, as part of the grant by Congress, approved August eighth, eighteen hundred and forty-six, and which is now held by bona fide purchasers under the State of Iowa, and the same is hereby relinquished to the State of Iowa."

To enable us properly to act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with a list of the tracts of land therein referred to, "held by bona fide purchasers of the State of Iowa," on the 2d March, 1861, certified under official seal, specifying in each case the date of sale, name of purchaser, consideration, and date of patent, or deed of conveyance by

the State, with all the essential particulars connected with the transaction.

This information is requested at your earliest convenience.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

To his excellency GOVERNOR OF IOWA,
Des Moines, Iowa.

On the 25th September, 1862, the Commissioner of the General Land Office addressed the governor of Iowa an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *September* 25, 1862.

To his excellency the GOVERNOR OF IOWA:

SIR: I respectfully call your attention to my letter of the 25th June last, requesting you to furnish this office, at your earliest convenience, with a list of the tracts of land sold by the State of Iowa, under the act of Congress approved August 8, 1846, above the mouth of the Raccoon Forks of the Des Moines River, and now held by bona fide purchasers, and request compliance therewith as early as practicable.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

159 In response to the foregoing letters of the Commissioner, the governor of Iowa, on the 20th of November, 1862, caused to be forwarded to the General Land Office a list certified by the said governor and by the land commissioner of said State, under the official seal, of all the lands situated above the Raccoon Fork of the Des Moines River, which had been certified and approved to the State under said act of August 8th, 1846, and also setting forth that all of said land had been sold and conveyed by said State by deed or patent prior to said 2d March, 1861, as follows:

List of Des Moines River lands above the mouth of the Raccoon Forks sold by the State of Iowa.

Then follows list of about 697 individual sales, as follows:

Dates of patents.	No. of patents.
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, 1858	13
Oct. 1, 1858	1
March 14, 1859	5
April 9, 1859	3
April 20, 1859	2
May 23, 1859	18
May 31, 1859	44
July 12, 1859	1
Feb'y 25, 1860	1
	697

Example.				Date.
W.¼ of NW.¼ }	S.	T.	R.	Ac.	March 25, 1852. Phineas S. Casidy.
NE.¼ of NW.¼ }	9	78	24	122.83 at $1.25.	Patented Feb'y 16, 1853. No. 2855.

Immediately follows certified copies of joint resolution of the general assembly, approved March 22, 1858, and resolutions of acceptance of Des Moines Navigation and Railroad Company of 15th April,
160 1858, signed by R. S. Burrows, president Des Moines Navigation and Railroad Company. Certified as a true copy by Elijah Sells, secretary of state, and above set forth.

Then follows list of lands:

Part of sec.	Sec.	T.	R.	Ac.	Date of Sale.	To whom sold and patented.	Date of patent.	No. of pat.
						D. Moines		
					May 14, 1855	N. & R. Co.	May 3, 1858	9
					do	do	do	10
					do	do	do	11
					May 6, 1856	do	do	9
					do	do	do	11
					do	do	do	12
					do	do	do	13
					do	do	do	112
					do	do	do	13
					do	do	do	14
					(No date.)	do	do	14
					May 14, 1856	do	do	9
					May 6, 1855	do	do	9

(Here follows copy of the general deed from the State of Iowa to the Des Moines Navigation and Railroad Company, dated May 18th, 1858, above set forth.)

The said list embraced all the lands situated above Raccoon Forks, mentioned in the patents from the State to said company, including those in question in this suit, and from said list it appears that all the sales to the Des Moines Navigation and Railroad Company were made prior to the date of the railroad grant of May 15, 1856. This list, as appears by indorsement thereon, was received and filed at the General Land Office, December 1, 1862.

Annexed and appended to said list are the following certificates of A. B. Miller, register of the State land office, and Samuel J. Kirkwood, governor of Iowa.

Copy of the final certificates.

STATE LAND OFFICE,
Des Moines, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true, and exemplifications of the sales and records of patents made out for the "Des Moines River Grant" in land certified to the State of Iowa, under
161 the act of August 8th, 1846, for the "Improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office, giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchasers," to whom patented, date and number of patent—except a part of that sold to the Des Moines Navigation and Railroad Company, the date of which sale is not in this office; but the dates of the patents are shown—and the consideration of

this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1.25 per acre. These lists include all lands heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Forks, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all these lands to which the State of Iowa had any title.

In testimony whereof, I have hereto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE, IOWA,
Des Moines, June 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is by the laws of the State of Iowa the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony I have hereunto set my hand, and caused the great seal of the State of Iowa to be hereto affixed, the date above written.

[L. S.] SAMUEL J. KIRKWOOD.

By the governor.

ELIJAH SELLS,
Secretary of State.

162 On the 12th July, 1862, the Congress of the United States passed an act, of which the following is a copy:

CHAPTER CLXI.

An act confirming a land claim in the State of Iowa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Forks and the northern boundary of said State; such lands are to be held and applied in accordance with provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22, 1858; and if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: Provided, That if the said said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of

this act, shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid.

Approved, July 12, 1862.

That on the 23d of February, 1863, the Commissioner of the General Land Office addressed to the Secretary of the Interior an official communication, of which the following is a copy:

163 GENERAL LAND OFFICE, *February 23d*, 1863.

SIR: Herewith I have the honor to lay before you a map exhibiting that portion of the route of the Des Moines improvement interest as claimed north of the Raccoon, under the original grant by act of 8th August, 1846, vol. 9, page 77, and also the lines of three railroads which traverse the same from east to west, in virtue of the railroad grant to that State by act of 15th May, 1856, vol. ii, page 9, and in reference to the matter respectfully submit the following:

1st. Under a construction given to the said Des Moines grant of 8th August, 1846, there was certified conditionally, by your predecessors, tracts above the Raccoon Forks, amounting in aggregate to acres 271,572.24; but in the case of the Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, the Supreme Court settled the principle whereby the Des Moines improvement claim above the Raccoon Forks, under said act of 8th August, 1846, was set aside and rejected.

2d. The State of Iowa thereupon came forward, under the railroad grant by act of 15th May, 1856, vol. ii, page 9, and selects, of the same lands mentioned under the first head, the quantity of, acres 202,509.44; leaving an area of 69,062.80 acres of said Des Moines selections not interfered with by railroads.

The railroad selections thus made, and entered in lists Nos. 33 to 42 inclusive, herewith, embrace "sections in place," and "indemnity" selection for the "Dubuque and Sioux City," the "Iowa Central Air Line," and the "Mississippi and Missouri" Railroads, according to Schedule B herewith.

The conflict of these railroad selections with the Des Moines was presented to your predecessor in report dated March 18, 1862 (Statutes 1860–61, page 251), which declares "that all the title which the United States still retain in the tracts of land along the Des Moines River,
164 and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress approved August eighth, eighteen hundred and forty-six, and which is now held by bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

Secretary Smith, upon said report, ruled, under date 10th April, 1862, that "such of the lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846, and further directed that "after carefully satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of Raccoon Forks as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona fide purchasers prior to 2d March, 1861, will be also certified to the State of Iowa."

Now, in regard to this latter part of Secretary Smith's ruling, it is proper here to invite attention to the fact that the sales thus alluded to

by him, and referred to the joint resolution of 2d March, 1861, as made by the State of Iowa to certain purchasers under the transcripts certified under said erroneous construction of the act of 8th August, 1846, for lands above the Raccoon Forks, are reported as embracing all the lands thus "improperly" certified for the Des Moines improvement above the said Raccoon Forks.

In this connection, it will be observed that in the act of 12th July, 1862, (Statutes, page 543,) extending the Des Moines improvement to the northern boundary of Iowa, and providing for indemnity to that improvement interest where the land had been sold by the United States, there is an exception made as to those released to the vendees of Iowa by said joint resolution, coupled with an express stipulation to this effect, "that if the said State shall have sold and conveyed any
165 portion of the lands lying within the limits of this grant," (by act of 12th July, 1862), "the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act shall inure to, and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

Now, in submitting these railroad lists for your consideration, in view of the application for your approval thereof, the question arises whether, under said ruling of your predecessor, these lists shall be approved to the State of Iowa as railroad lands without reference to said sales, for which the said act of 12th July, 1862, provides an indemnity fund where they prove invalid, or shall terms of saving and exception, in respect to said sales, be inserted in said transcripts.

Should it be determined by you that such terms are not required, in view of the indemnity stipulation above mentioned, the lists, as they now stand, are before you for approval; but if otherwise, it is respectfully suggested that you direct the insertion of such terms, before approval, as the nature of the case, in your judgment, may require.

3d. There is another important matter to be considered in the premises, and that is the force and effect of said act of 12th July, 1862, in so far as the legal requirement is concerned, commanding the department to grant indemnity to that improvement for lands sold or disposed of by the United States prior to the passage of said act, the Iowa sales excepted. The mode of dealing with this matter is presented in the report from this office, dated October 27, 1862, as approved by Secretary Smith, November 3, 1862, and the principles laid down in that report and ruling will consequently govern this office in the adjustment of the extension interest by said act of 12th July, 1862, unless otherwise directed by you.

With great respect, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

Hon. J. P. USHER,
Secretary of the Interior.

166 That on the 7th of April, 1863, W. T. Otis, Assistant Secretary of the Interior, addressed to the Commissioner of the General Land Office an official letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
April 7th, 1863.

SIR: Your report of the 23d February last, in regard to the proper measures for carrying into effect the act of Congress approved July 12, 1862, by which the grant for the improvement of the Des Moines River

was extended, has been carefully considered in connection with your report of the 27th October last upon the same subject.

The Secretary instructs me to state that after mature deliberation and examination of the additional exhibits filed since your report was received, he concurs in the views you have expressed. He has accordingly approved the lists of lands enuring to the State of Iowa under the act of Congress of 15th May, 1856, which accompanied your report, and the same are now reported to your office that the same usual transcripts may be furnished to the governor.

The argument of Mr. Mason and the communication of Mr. Steiger, and its enclosures, which have been received here whilst the matter has been pending, are also herewith transmitted.

I am, sir, very respectfully, your obedient servant,

W. T. OTIS,
Assistant Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

The following is a section of the statute of the State of Iowa, which has been in force since 1851:

"Where a deed purports to convey a greater interest than the granter was at the time possessed of, any after acquired interest of such granter, to the extent of that which the deed purports to convey, enures to the benefit of the grantee." Code 1851, section 1202. Revision 1860, section 2210.

167 On the 31st December, 1868, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 31, 1868.

SIR: I return the papers which accompanied your letter of the 25th May last, in the case of Elisha Spicklemier, claiming under the preemption law the N. W. qr. sec. 15, t'p 84, range 27, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress approved August 8, 1846, and was then "held by bona-fide purchasers under the State of Iowa," and the title of the United States was by said resolution relinquished to said State.

Your decision in favor of Spicklemier is therefore reversed.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

On the 31st December, 1868, Hon. O. H. Browning, Secretary of the Interior, on appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 31, 1868.

SIR: I have received your letter of the 12th June last, submitting

under the papers in the case of David C. Martz, involving the right to the W. h'f, N. E. qr., 17–80–24, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of
168 March 2d, 1861, had been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress approved August 8th, 1846," and was "then held by bona-fide purchasers under the State of Iowa," and the title of the United States was by said resolution relinquished to said State.

Your decision adverse to Martz is affirmed, and the papers are herewith returned.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office.

On the 27th February, 1869, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 27, 1869.

SIR: I return the papers received with your letter of the 7th August last, in the case of Ezra H. Bennett, involving the right to the S. W. of S. E. q'r of sec. 1, t'p 82, range 26, Des Moines, Iowa.

This tract having been sold by the State of Iowa prior to the passage of the joint resolution of March 2d, 1861, the title of the United States was by said resolution relinquished to said State, and your decision adverse to the pre-emption of said Bennett is affirmed.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

Cash, 21,200.

On the 27th February, 1869, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

169 *On the 27th February, 1869, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 27, 1869

SIR: I have received your letter of the 22d December last, submitting the papers in the case of Levi Hull, involving the right to the SE. qr. NE. qr., and lot 1, sec. 17–83–26, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had been certified to said State improperly by the Department of the Interior as a part of the grant by act of Congress approved August 8, 1846, and was then "held by a bona fide purchaser under the State of Iowa," and the title of the United States was by said resolution relinquished to said State.

Your decision in favor of the pre-emption of said Hull is therefore reversed. This decision will be made applicable to all similar cases. I return the papers herewith.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner General Land Office.

For and in consideration of nineteen thousand eight hundred and fifteen and 67-100 dollars, the De Moine Navigation and Railroad Company (a corporation organized under the laws of the State of Iowa) doth hereby grant and convey to Richard B. Chapman, of Morristown, State of New York, the following tracts of lands in the State of Iowa, to wit, in Webster County, the southeast quarter of section one, in township eighty-seven, range twenty-seven (together with a large amount of other lands).

And the said De Moine Navigation and Railroad Company
170 doth hereby warrant the title against all persons whomsoever.

In witness whereof Roswell S. Burrows, president, and Alva Hunt, treasurer of said company, having been hereunto duly authorized, have hereunto set their hands and affixed the seal of said company this seventeenth day of February, in the year one thousand eight hundred and fifty-eight.

[L. S.]

R. S. BURROWS, *Pres't.*
A. HUNT, *Treas.*

STATE OF NEW YORK,
County of New York, ss:

I certify that I, the subscriber, am a commissioner for the State of Iowa in and for the State of New York; that on the nineteenth day of May, 1858, personally appeared before me R. S. Burrows, president, and A. Hunt, treasurer, personally known to me to be the identical persons whose names are affixed to the within deed as granters, and acknowledged the instrument to be their voluntary act and deed.

Given under my hand and official seal on the day and date above written.

[L. S.]

JAS. C. PATTERSON,
Commissioner for Iowa in New York.

In the United States circuit court, district of Iowa.

Depositions of Josiah A. Harvey, taken before me at my office, in Sidney, in the county of Fremont, and State of Iowa, on this 1st day of October, 1870, in pursuance of the stipulation hereunto annexed, to wit:

The said witness, being first duly sworn, deposes and states:

Interrogatory 1st. What is your name, age, place of residence, and occupation?

Answer. My name is Josiah A. Harvey. My age is forty-two years. My place of residence is Sidney, Fremont County, Iowa; and my occupation, practicing law and farming.

Int. 2d. Are you acquainted with the parties, or either of them; and, if so, how long have you known them, or either of them?

171 Answer. I am not acquainted with the defendant. I have been

acquainted with plaintiff, William Baker, as well as I now remember some six or seven years.

Int. 3d. State whether or not you are the person designated and appointed as agent of the State of Iowa to adjust the land claims between the State of Iowa and the government of the United States, in, by, and under the act of the general assembly of the State of Iowa, approved March 30, 1866, and entitled "An act providing for the adjustment of certain claims with the general government.

Answer. I am the person appointed in and by said act a commissioner for the State of Iowa to adjust such claims.

Int. 4th. If you answer the third interrogatory in the affirmative, then state whether or not, as such agent, you undertook the discharge of the duties imposed by said act of the general assembly and performed the same.

Answer. I did undertake the duties so imposed and discharged the same, except as to claims arising under the swamp grant of September 28, 1850, which to a great extent still remain unsettled.

Int. 5th. If you did as such agent, under said grant, make an adjustment of said land grants by the general government to the State of Iowa, state when and where, and by whom such adjustment was made, and whether or not at such adjustment any other persons appointed by the State to represent the interest of the Des Moines Valley Railroad Company was present; and if so, state who.

Answer. I effected adjustment of various claims at different and diverse times, but the adjustment concerning the "Des Moines River lands," and the one I understand to be referred to, was made about the 28th day of May, 1866, and received the Secretary's approval on the 29th of said month, and was made at the General Land Office, Interior Department of the general government, in the city of Washington, District of Columbia, and by the Commissioner of the General Land
172 Office (acting under the approval and sanction of the Secretary of the Interior) on the part of the government, and myself on behalf of the State of Iowa; but before becoming complete or binding on the State, under the act of the legislature the settlement was to have the sanction of the census board of the State. (A correct report of this settlement will be found in the report of the register of the State land office of the State of Iowa, of November 12, 1867, commencing on page 23.) No other person appointed by the State to represent the interest of the Des Moines Valley Railroad Company was present at the time the settlement was effected, if I remember correctly.

Int. 6th. State whether at such adjustment the corporation known and designated as "The Des Moines Navigation and Railroad Company" was present or represented, and also state whether or not said navigation and Railroad Company or any of its grantees, so far as you know, had any knowledge or notice of said adjustment, or of the time when the same would be made, and also state whether or not, so far as you know, the said "Des Moines Navigation and Railroad Company" were, directly or indirectly, parties to such adjustment, or were consulted with reference to it or assented to the same, or to the making thereof, as made and stated in your *in your* report of said adjustment to the census board of the State of Iowa.

Answer. Neither the "Des Moines Navigation and Railroad Company," nor any of its grantees, were present at such adjustment, nor were they or either of them, so far as I know, notified of the time when it would be made, or consulted in reference to it, and neither were, di-

rectly or indirectly, parties to said adjustment, or assented to the same, so far as I know.

Int 7th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the cause, or either of them, or that may be material to this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Not being advised as to the matters in issue further
173 than I gather from the interrogatories asked me, I am unable to determine what other facts of my knowledge would be of service to either party; but, as material to this examination, I properly state further as to the subject of the fifth interrogatory, that, although the "Des Moines Navigation and Railroad Company" was not represented there at the time the adjustment was completed, still it had, through its representatives and officers, been laboring to have the adjustment made on the terms on which it was made (as set forth in my report above referred to, and as shown in papers on file in the State land office,) and said adjustment was understood to be made with their assent and approbation, and in accordance with their desire.

And as to the subject of interrogatory sixth, I state further that, after my appointment as commissioner, I had, both before and after said adjustment was made, conversations on the subject with John Browne, the agent (as well as a member) of the Des Moines Navigation and Railroad; he knew that the adjustment would be made and the terms of it, and always sought these interviews, or brought about the conversations, for the purpose, apparently, of objecting to the proposed action. He was inclined to protest against it as *in* infringement on the rights of *of* said company and its grantees; and although I did not notify him of the exact time, I did give him to understand that, under the State legislation and the law as understood to be settled in the Litchfield case (the decision in the Wolcott case not being then made), I felt warranted in making the adjustment on the terms proposed, and would do so, leaving all who considered themselves aggrieved thereby to seek redress in the court.

JOSIAH A. HARVEY.

STATE OF IOWA, *Fremont County, ss:*

I, J. C. Shockley, clerk of the district court in and for said county, hereby testify that the foregoing deposition of J. A. Harvey was taken
174 before me at my office in Sidney, in said county, on the 1st day of October, 1870, in pursuance of stipulation hereunto attached; that said witness was sworn to testify the truth of his knowledge touching the matters in said cause, and to make true answers to the interrogatories propounded, and that he transcribed said interrogatories and wrote out his said deposition in his own hand, and then subscribed and swore to the same before me, the day above written.

Witness my hand and official seal, the aforesaid

[SEAL.] J. C. SHOCKLEY,
Clerk D. C.

CERTIFICATE No. 3808.

The State of Iowa to all to whom these presents shall come, greeting:

Whereas W. T. Woolsey, of Webster County, Iowa, has deposited in the office of the secretary of the State of Iowa a certificate of the school

fund commissioner of Webster County, Iowa, whereby it appears that full payment has been made by the said William T. Woolsey according to the provisions of the act of the general assembly of the 25th of February, 1847, entitled "An act to provide for the management and disposition of the school fund, for the west half of the southeast quarter and the north half of the southwest quarter of sec. 1, township 87, range 27, west of 5 P. M., containing one hundred and sixty acres according to the official plat of the survey of said lands returned to the General Land Office of the United States by the surveyor general, which said tract has been purchased by the said William T. Woolsey":

Now know ye that the State of Iowa, in consideration of the premises and in conformity with the several acts of the general assembly in such case made and provided, has given and granted, and by these presents do give and grant unto the said William T. Woolsey, and to his heirs and assigns, the said tract of land above described, to have and to hold the same, together with all the rights, privileges, instruments, and appurtenances of whatsoever nature thereto belonging, unto the said William T. Woolsey and to his heirs and assigns forever.

In testimony whereof, I, James W. Grimes, governor of the
175 State of Iowa, have caused these letters to be made patent and the great seal of the State of Iowa to be hereto affixed. Given under my hand at Iowa City, the 21st day of December, A. D. 1854, and of the State of Iowa the ninth.

JAMES W. GRIMES.

By the governor.
GEO. W. MCCLEGG,
Secretary of State.

Accorded in vol. v, page 133.

176 The following is the 8th section of the act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4th, 1841:

"SEC. 8. And be it further enacted, That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: Provided, that to each of the said States which has already received grants for said purposes there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States to be made within their limits respectively in such manner as the legislature thereof shall direct; and located in parcels conformably to sectional divisions and sub divisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under Territorial Government, for purposes of internal improvement *as* aforesaid, *as* shall make five hundred thousand acres of land, to be selected and located as aforesaid."

That on the 12th day of March, 1874, the general assemby of Iowa passed an act, as follows:

CHAPTER XXIX.

IN RELATION TO RIVER SCHOOL LANDS IN WEBSTER AND HAMILTON COUNTIES.

An act to quiet and confirm the title to certain lands in Webster and Hamilton Counties, and adjust the matters connected therewith.

177 Whereas the State of Iowa has heretofore sold and contracted to sell certain lands situated in the counties of Webster and Hamilton, in this State, as school-lands inuring to the State of Iowa under the act of Congress approved September 4th, 1841, known as the five hundred thousand acre grant; and

Whereas said lands are now claimed by the Des Moines Navigation and Railroad Company and its grantees, adversely to the titles and contracts of the State as aforesaid, and suits are pending and being brought against such persons holding the same under the State of Iowa by such adverse claimants for the possession thereof, and such litigation will involve such persons in costs, expenses, and trouble, and the interests of the State may not therein be fully protected, and its title to that class of lands may therein be declared void; therefore,

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That the governor of this State be and he is hereby empowered and directed to proceed to have the question of title to said lands adjudicated by a court competent jurisdiction, and to that end he may employ counsel in aid of the attorney-general, in behalf of the State, and at the expense thereof; that he either cause intervention to be made by the State of Iowa as defendant in any cause now pending against any grantee of the State, as aforesaid, or by original process cause suit to be brought in the name of the State of Iowa against any person claiming said land adversely, to test the title thereof, and shall appeal from the judgment of any inferior court to appellate court in case judgment should therein be adverse to the title of the State as aforesaid, and shall defend in such appellate court any appeal brought by such adverse party, and said State shall in all respects have the same rights and be subject to the same rules, and such suit or suits shall in all respects be conducted, as though the same were pending between individuals, and any court having jurisdiction of the subject matter, if the action *was* were pending between individuals, shall have full and complete jurisdiction therein.

SEC. 2. Such suit or suits shall be prosecuted without any
178 unnecessary delay. Any State officer having the custody of any certificate, patent, list of selections, or any other document affecting the title of the State shall, upon request of the governor, furnish certified copies thereof without costs to the State, and such certified copies shall be competent and admissable in evidence in such litigation with the same force and effect as the originals.

SEC. 3. The counsel for the State in such litigation may agree upon the facts material in said cause with any adverse party, and may submit the same to the court upon such agreed facts, provided that such agreed facts shall be approved as true in all respects by the governor and register of State land office; and, pending litigation in one case wherein the question of title shall be clearly and directly in issue, the court having jurisdiction thereof may, upon the application of the State, by its counsel, order the prosecution of all other cases wherein the same question may be involved to be stayed until final judgment shall be

rendered in the case litigated, and in such cases bail shall not be required.

SEC. 4. In case the question of title shall be finally adjudged against the State of Iowa, the governor shall negotiate with the adverse owners for a relinquishment of the title to the State of Iowa of all lands of that class which have been sold by the State of Iowa, by and through John Tolman, school-fund commissioner of Webster County, and such as are held under contract from the State by virtue of the provisions of chapter 156 of the laws of the seventh general assembly of the State of Iowa, approved March 23, 1858, and such as the State of Iowa would by reason of any law of said State be required to convey to the claimant, if the same were in law and fact a part of the 500,000 acre grant, whether the same be now held by the original claimant, his heirs or bona fide assignees or persons claiming the same by title derived in good faith from or through such original claimant, and he shall ascertain the fair value of all such lands exclusive of the improvements thereon, and the price and terms upon which such adverse owners will release the same to the State of Iowa for the use of the parties claiming the same under the State, and shall report such facts to the next general assembly; and no writ of execution for the recovery of the possession thereof shall be issued against any person embraced within the provisions of this act until after adjournment of the general assembly of the State of Iowa convening next after such report is filed.

SEC. 5. In case the title of said land is adjudged to be in the State of Iowa as school-land, as aforesaid, the register of the State land office shall carry out all contracts made by the State, by its proper officers, as above herein set out; and the governor shall cause patents to be issued therefor to the parties entitled thereto under the provisions of section four of this act, upon the payment of the sum of one (1) 25 100 dollars per acre; and he shall cause the remaining lands of that class, within the counties aforesaid, to be appraised and sold in pursuance of the laws now in force relating to school lands; provided, that any person residing on such land, or any person who has made valuable improvements thereon prior to the first day of January, 1874, and who is not the owner of more than one hundred and sixty acres of land, may be permitted to purchase the lands embraced in his or her claim, so that the land thus purchased, with the other land now owned by such person, shall not exceed in the aggregate one hundred and sixty acres, at the price of five dollars per acre.

SEC. 6. The provisions of this act shall be liberally construed, so as to grant full relief to persons holding under the State according to the principles of equity and justice, and in case the title is adjudged against the State and its grantees, the executive council may audit and allow to such persons all costs and expenses they have necessarily incurred in defending their titles, but not exceeding fifty dollars attorney's fees shall be allowed in any one case.

SEC. 7. This act shall not be construed to affect the title to said land in any manner, nor shall any section be construed as an admission upon the part of the State in disparagement of its title to any of the lands embraced in this act.

SEC. 8. That for the purpose of the litigation contemplated by this act, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of three thousand dollars, or so much thereof as may be necessary, to be paid out upon accounts duly verified and approved by the executive council, and for the purposes of the other provisions of this act there is hereby appropriated, out of any

money in the treasury not otherwise appropriated, the sum of thirteen hundred dollars, or so much thereof as may be necessary, to be paid out upon requisition of the governor.

SEC. 9. This act shall take effect and be in force from and after its publication in The Daily Iowa State Register and Fort Dodge Messenger.

Approved March 12th, 1874.

I hereby certify that the foregoing act was published in The Fort Dodge Messenger March 26, and in The Daily Iowa State Register March 27, 1874.

JOSIAH T. YOUNG,
Secretary of State.

181 RESPONDENT'S EVIDENCE.

The following is an abstract of the title of defendants, which it is agreed may be read from the acts of Congress, or of the legislature of Iowa, or the public printed reports of the Federal and State officers:

I. An act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved Sept. 4th, 1841.

II. An act of Congress admitting the State of Iowa into the Union, and assenting to a diversion of the lands to educational purposes.

Report of Harvey, register of the State land office, for 1867, p. 4.

Rev., pp. 965, 978.

Ans. of convention of 1844.

III. The selection by the agent of the State as school lands, as follows:

182 *List No. 53, exhibiting the tracts of public land situated in the district of lands subject to sale, at Dubuque, which have been selected for the State of Iowa, under the 8th section of the act of Congress, approved 4th September, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights." Approved 5th March, 1851.*

Date of the filing of the list in the register's office, being the date the selection takes effect.	Description of land.				Area of tracts.		This column exhibits the actual area of the tracts which contain 320 acres and upwards, and also cases in which the tracts, though containing a less quantity, are taken as equivalent to 320 acres. NOTE.—The total of this column is the whole area of the selections by this list.	Remarks.
	Parts of sec.	Sec.	Tp.	Range.	Acres.	0ths.		
	S. W. ¼	1	87	27	160	}		
	W. ½ of S. E. ¼	1	87	27	80	}		
								STATE OF IOWA, 20 *July*, 1850. I hereby apply in behalf of the State of Iowa for the tracts described in this list, as being selected for said State under the 8th section of the act of 4th September, 1841. *Agent.* LAND OFFICE AT DUBUQUE, 14 *August*, 1850. I hereby certify that the foregoing list was filed in this office on the 20 July, 1850, and that the selections are correct, and that no valid conflicting right is known to exist. TH. M. KNIGHT, *Register.*

STATE LAND OFFICE,
Des Moines, Iowa:

I, David Secor, register of the State land office of the State of Iowa, hereby certify that the foregoing is a true and correct copy of the original selection on file in this office, as to the S. W. ¼ and W. ½ of S. E. ¼ of section 1, township 87 N., of range 27 west.

In testimony whereof I have hereunto set my hand and affixed my official seal, this 25th day of March, A. D. 1875.

[SEAL.]

DAVID SECOR, *Register.*

183 This diagram is to follow list of selections on page 127:

TOWNSHIP NO. 87 N., RANGE NO. 27 WEST, 5TH MERIDIAN.

6	5	4	3	2	1 S.C.H
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Surveyed in 1840 by C. T. Norris, deputy surveyor.

I certify that the above is a true copy of the original plat in this office.

C. H. BOOTH,
Sur. Gen.

SURVEYOR-GENERAL'S OFFICE,
Dubuque, May 1st, 1850.

STATE LAND OFFICE, *Des Moines, Iowa.*

I, David Secor, register of the State land office of the State of Iowa, hereby certify that the within is a true copy of the entries and certificates as they appear upon the plat books of this office, of section one, township eighty-seven N., range twenty-seven west, of the 5th p. m., Iowa.

In testimony whereof I have hereunto set my hand and affixed my official seal this 2nd day of April, 1875.

DAVID SECOR, *Register*,
By JOHN M. DAVIS, *Deputy.*

184 IV. An act of the general assembly of the State of Iowa, as follows:

AN ACT providing for the adjustment of certain land claims with the general government.

Whereas the excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000-acre grant, has not been reconveyed nor satisfaction therefor rendered to the general government; and

Whereas the lands falling to the State under the joint resolutions of Congress of March 3d, 1861, entitled "Joint resolutions to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land-claim in the State of Iowa and for other purposes," approved July 12th, 1862, have not yet been certified or approved to the State; and

Whereas the claims of the State against the United States, arising under the swamp-land grant, remain to a very great extent in an unsettled and unsatisfactory condition; and

Whereas the interests of the State and her grantees demand a speedy settlement of all said matters: Therefore,

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That Josiah A. Harvey, register of the State land office, be, and he is hereby, appointed a commissioner, on behalf of the State of Iowa, to adjust with the general government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interests of the State, and he is hereby authorized to adjust the said excess of the 500,000-acre grant by permitting the United States to retain, out of the indemnity land falling to the State under said act of Congress, of July 12th, 1862, an amount equivalent to such excess: Provided, That nothing herein contained shall be construed to be a
185 relinquishment of the claim of the State under the said 500,000-acre grant to the 12,813 55-100 acres selected as a part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August, 1846, known as the Des Moines River grant; and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

SEC. 3. As soon as the claim or claims or matters of difference under any one of said acts shall be adjusted, said commissioner shall report the same to the census board, setting forth the terms and mode of adjustment, and said board shall examine and pass upon said adjustment so presented, and the approval of a majority of said board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing, signed by the members of said board agreeing thereto, and attested by the great seal of the State of Iowa.

SEC. 4. Said commissioner shall receive as his compensation two dollars per day for the time actually engaged in the discharge of the duties by this act imposed, with his necessary expenses in attending to the same; and his account for such time and expenses, made out from time to time or at the conclusion of his services as such commissioner, and sworn to by him, shall be presented to the census board for allowance, and if approved and allowed by them the auditor of State shall draw his warrant on the State treasurer, who shall pay the same out of the general revenue of the State.

SEC. 5. The amount of expenses incurred and paid out of the treasury, as provided in the preceding section, in carrying out the provision of this act, shall be apportioned by the census board as nearly as practicable pro rata among the parties receiving or entitled to receive the benefits resulting from the adjustment of said several matters
186 with the general government, and the amount thus apportioned shall be paid into the State treasury by such parties respectively before they shall be entitled to receive the proceeds or benefits of such settlement.

SEC. 6. All indemnity scrip received from the general government, and all swamp lands patented to the State, shall be conveyed to the counties to which they belong, and all money and indemnity scrip received from the government shall be placed under the control of the board of supervisors of the several counties to which they belong, leaving the counties thereof, through their respective boards of supervisors, to settle with their grantees

SEC. 7. This act, being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published at Des Moines.

Approved March 30th, 1866.

Report of Harvey, commissioner of the State of Iowa, as follows:

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land claims with the general government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State, as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and
Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the
187 11th general assembly, I have the honor to report that I have consummated an adjustment with the United States, of the excess of lands received by the State under the grant of September 4, 1841; also the lands confirmed to the State by the joint resolution of March 2d, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State, in this settlement, is credited with the whole amount of land in odd-numbered sections, and lying within five miles of the Des Moines, from the Raccoon Fork to the northern boundary of the State, determined to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

1st. Indemnity lands selected under special certificate dated April 25th, 1863	297,603.74	acres
2d. Remaining lands in place yet to be certified	167,109.02	"
3d. Lands in place confirmed by the joint resolution of March 2d, 1861	44,838.64	"
4th. Lands selected and heretofore certified on the East Fork of the Des Moines River, and more than five miles from the western or main branch	11,661.80	"
5th. The excess selected and approved to the State as a part of the 500,000 acre grant under act of September 4, 1841	35,473.54	"

Making in all 536,686.74 acres, and leaving due to the State to balance the whole amount of the grant, 1,317.32 acres.

For this balance a special certificate will be issued.

The 11,661.80 acres on the East Branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the department under the decision of the Attorney-General to be a legitimate and proper offset to so much of this grant; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000-acre grant

(act 1841) includes the 22,660.05 acres over and above the 500,000
188 acres which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1854, and which has hitherto been considered as the excess, and also the 12,813.51 acres, which were once approved as a part of the 500,000 acres grant and afterwards rejected, and approved and certified as a part of the Des Moines River grant. These lands have been known as the river school lands. Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the department had determined.

The necessary and proper lists, according to the terms of this adjustment, will be made and approved by the secretary, and delivered to me or sent to the State.

In the preparation of these lists, all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except so
189 far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant (35,473.54 acres) thus deducted, is by an agreement between the State and the Des Moines Valley Railroad Company (the beneficiary of the grant) to be credited to said company at the rate of one dollar and twenty-five cents per acre in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be credited on the claims they are under obligation to satisfy with the sum of $44,341.67.

My authority extends only to settlement with the general government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior, a copy of which accompanying Mr. Kilbourne's report, made last winter, is herewith transmitted for your examination in connection with this adjustment, is the result of their efforts.

The labors of these agents (Messrs. Kilbourne and Mason) heretofore in the premises have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet with your

approbation, and that you will, as I think you have the right, and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted,

J. A. HARVEY,
Commissioner.

190 Adjustment of the Iowa Des Moines River grant under the act of July 12th, 1862, and joint resolution of March 2d, 1861.

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25, 1863	297,603.74
The lands in place to be certified	167,109.02
The lands in place confirmed by joint resolution of March 2d, 1861	44,838.64
The quantity selected on the East Fork of the Des Moines River, and certified to the State under the original law of August 8th, 1846	11,661.80
The excess selected and approved to the State under the 500,000-acre grant of 1841	35,473.54
	556,686.74
Remaining indemnity due the State	1,317.32
	558,004.06

CREDIT.

The State of Iowa with the whole area of the grant above the Raccoon Fork	558,004.06

J. M. EDMUNDS,
Com'r Gen'l Land Office.

GENERAL LAND OFFICE, *May* 21, 1866.

DEPARTMENT OF THE INTERIOR, *May* 22, 1866.

The adjustment, as herein stated, is hereby approved.

JAS. HARLAN,
Secretary.

THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa, June 20th, 1866.

W. M. STONE,
Governor,
JAMES WRIGHT,
Sec'y State,
JOHN A. ELLIOTT,
Auditor,
W. H. HOLMES,
Treasurer,
Census Board.

191 The item in the annexed adjustment of 35,473.54 acres, being excess selections under the 500,000-acre grant to the State of Iowa, approved to said State February 20, 1851, includes 12,813.51 acres, described as follows, to wit:

Parts of section.	Sec.	Tp.	R.	Acres.
W. h'f of S. W. q'r	5	87	26	80.00
All of	7	87	26	597.92
N. h'f of	9	87	26	320.00
S. h'f of	15	87	26	320.00
All of	19	87	26	609.18
N. h'f of	21	87	26	320.00
W. h'f of	23	87	26	320.00
N. W. q'r	27	87	26	160.00
W. h'f of E. h'f and E. h'f of W. h'f	29	87	26	320.00
All of	31	87	26	605.92
N. fr. h'f of N. W. q'r, and lots 1, 2, 3, and 4	1	86	27	241.56
S. h'f of	11	86	27	320.00
W. h'f of S. E. q'r, and S. W. q'r	1	87	27	240.00
N. E. q'r	7	87	27	160.00
N. h'f of	9	87	27	320.00
E. h'f of	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
N. E. q'r and N. E. q'r of N. W. q'r	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. h'f of S. E. q'r	23	87	27	275.50
All of	25	87	27	604.25
W. h'f of	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	26	626.44
E. h'f of	33	87	27	320.00
W. h'f of N. E. q'r, S. E. q'r, and E. h'f N. W. q'r	31	88	27	320.00
S. E. q'r	3	88	27	160.00
N. E. q'r	11	87	28	160.00
E. h'f of S. E. q'r N. W. q'r of S. E. q'r, and lots 1, 2, and 3	5	88	28	252.44
W. fr. h'f of section and N. E. q'r	7	88	28	468.00
E. h'f of section and N. h'f of N. W. q'r	11	88	28	400.00
S. W. q'r	13	88	28	160.00
W. h'f of S. W. q'r	17	88	28	80.00
E. h'f of N. E. q'r	19	88	28	80.00
S. h'f of	21	88	28	320.00
E. h'f of	26	88	28	320.00
N. h'f of section, and S. E. q'r	33	88	28	480.00
Total				12,813.51

Subsequently to said approval, the above lands were deducted from the lists as improper selections, because found in conflict with the river grant of 1846.

192 The above action of the department, rejecting the above 12,813.51 acres from the original lists, was disapproved by the Secretary of the Interior, under date of February 28, 1865; hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above-described lands is affirmed as enuring to the State of Iowa, from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the Hon. Secretary of the Interior for his approval.

J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *May* 29, 1866.

Approved:

JAS. HARLAN,
Secretary.

Filed in State land office, August 2, 1866.

J. A. HARVEY,
Register.

The following is an adjustment or settlement made between the State of Iowa and the Des Moines Valley Railroad Company, June 20, 1866·

Whereas David W. Kilbourne, appointed and commissioned by the governor of the State of Iowa to select the indemnity lands and to procure the certification of all the lands belonging to the Des Moines River grant under the act of Congress approved July 12th, 1862, found it necessary, in order to procure the certification of the same to the State, to allow the United States Government to retain thirty-five thousand four hundred and seventy-three acres and fifty-four hundredths of an acre (35,473.54 acres) in settlement for the same number of acres, which were the excess selected and approved to the State under the five hundred thousand acre grant of 1844 over and above the said five hundred thousand acres;

And whereas the said David W. Kilbourne did report to the
193 governor that the Des Moines Valley Railroad Company, late the Keokuk, Fort Des Moines and Minnesota Railroad Company, which company is the beneficiary of said grant, subject to the payment of certain debts against said grant and subject to other conditions, would consent that said lands be retained by the general government on condition that said railroad company should be credited by the amount of lands so retained at one dollar and twenty-five cents per acre upon the claims due the State against said grant, as set forth in the ninth section of the act of the legislature, approved March 28, 1864, granting said lands to said company;

And whereas the said David W. Kilbourne did report to the governor that the general government required the consent of the State of Iowa, by some duly authorized agent, to the retention of said lands in settlement;

And whereas the legislature of the State did by an act entitled "An act for the adjustment of certain land claims with the general government," approved March 30th, A. D. 1866, authorize and empower J. A. Harvey to give such consent and make such settlement, with the approval of the census board, and to procure the certification of the lands of said grant to the State;

And whereas said Harvey has given the assent of the State to the retention by the general government of the said lands in settlement, and has recommended that said credit be given to said railroad company on said debts due to the State;

And whereas the said railroad company, by Hugh T. Reed, its duly authorized agent for that purpose, has assented to the retention of said lands for the purpose of said settlement: therefore the said settlement so made by said Harvey, with the credit so recommended by him to be made to said railroad company, is hereby approved, and in consideration of the consent given by said railroad company to settlement of said matter in manner aforesaid, and in consideration of the said railroad company agreeing and consenting that said thirty-five thousand four hundred and seventy-three thirty-four-hundredth acres of land
194 contained in said grant, of which said railroad company is the beneficiary, should be retained by the general government for the purposes aforesaid, and for the purposes of carrying out the said agreement on the part of said State with said railroad company, therefore it is hereby further ordered that said railroad company be credited on said indebtedness and upon the claims which it is required to pay, and said railroad company is hereby credited on the said indebtedness

with the sum and amount of said thirty-five thousand four hundred and seventy-three fifty-four-hundredth acres of land, at the rate and sum of one dollar and twenty-five cents per acre, being forty-four thousand three hundred and forty-one eighty-two-hundredth dollars, to date from the 20th day of June, A. D. 1866.

In testimony whereof, we, the census board of the said State, have hereunto affixed our hands and the seal of said State.

Done by said census board while in session.

[L. S.]

W. M. STONE, *Governor*,
JAMES WRIGHT, *Sec'y State*,
JOHN A. ELLIOTT, *Auditor*,
W. H. HOLMES, *Treasurer*,
Census Board of the State of Iowa.

The Commissioner of the General Land Office certified, and the Secretary of the Interior approved, to the State of Iowa, under the said adjustment, as falling to the State under joint resolutions of March 2d, 1861, on the 14th of June, 1866, 12,209.82 acres, lying in townships eighty and eighty-one, and ranges 24, 25, 26, and 27 west, 5 P. M.

Also on the same day, 52,628.82 acres, lying in townships 86, 87, 90, 91, and 92, ranges 26, 27, and 28 west, 5 P. M.

Also a list of lands lying on the East Fork of the Des Moines River, containing 11,152.45 acres, in township 91 and 92, ranges 27 and 28.

The following is a statement showing the whole area of the
195 grant to the State of Iowa, under the act of the 12th of July, 1862, and the amount sold and otherwise disposed of by the United States prior to the passage of said act; and showing also the area contained in the old "river lists," and the vacant lands within the limits of said grant above the mouth of the Raccoon Fork of the Des Moines River:

Whole area of the river grant, from the Raccoon Fork to the northern boundary line of the State		558,000.64
Lands sold and patented and in process of patenting	44,348.60	
Pre-emption claims prior to the act 12th July, 1862	13,993.77	
Selected for railroads—6-mile limits	115,443.84	
Selected for railroads—15-mile limits	118,009.16	
Selected under the swamp act of 1850	34,942.79	
Selected for university, under act of 1840	2,332.25	
	329,070.41	
Selected and embraced in the old river lists	58,817.30	
Vacant sections and parts of sections in place, within the limits of the river grant	170,116.91	
		558,004.06

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 28, 1865.

SIR: The authorized agents of the State of Iowa have taken exceptions to certain items charged by you to the State, in setting apart the indemnity to be selected pursuant to the act of Congress approved July 12, 1862, (Stat., vol. 12, p. 543,) for aid in improving the navigation of the Des Moines River.

From your report of the 14th March last, it appears that the entire quantity of lands inuring to the State, as determined under the opinion of my immediate predecessor, dated November 3, 1862, is 558,001.16 acres. You have decided that against said amount the State is chargeable—

196	1st. With lands found in place as heretofore listed	224,961.17 acres
	2nd. With lands confirmed to the State by joint resolution of March 2d, 1861, though not within five miles of the river	11,661.80 acres
	3d. With an excess of land that has been listed to the State of Iowa under the grant by act of September 4, 1841	19,308.17 acres
	4th. With the amount of special certificate issued	300,000.00 acres
	Total	555,931.04
	Leaving a balance due of	2,070.12 acres

The agents of the State, having taken an appeal from your action, claim that there is improperly included in the 1st item 12,813.51 acres of land that has heretofore been certified to the State under the grant of 500,000 acres by the act of Congress approved Sept. 4, 1841, and that the second and third items, as above, have been erroneously charged, and should not enter into the account.

They also claimed that you erred in refusing to sanction the selection of even-numbered sections along the Des Moines River, which are alternate to the odd-numbered sections granted.

Having examined the subject, I am of the opinion that the 12,813.51 acres should not be charged in this account. These lands were approved to the State on the 17th February, 1851, under the grant of 500,000 acres, by the act of September 4, 1841, and it is to be inferred from other facts that they have been sold by the State during the time intervening since the approval. They lie above the Raccoon Fork of the Des Moines River, and hence were not a part of the original grant by the act of August 8, 1846; nor did the confirmatory act of 1861 create a title superior to that which was confirmed and recognized by this department on the 17th of February, 1851.

Indemnity for the tracts set apart for railroads within the five-mile limits of the Des Moines River grant has been allowed by the de-
197 cisions of the department, dated November 3, 1863, and April 7, 1863, and I am of the opinion that these 12,813.51 acres stand in the same category as the railroad tracts, and that indemnity for them should likewise be allowed.

In regard to the item of 11,661.80, I am of the opinion that it is a proper charge against the State in this account, although the lands do not lie within five miles of the Des Moines River as now determined and delineated by geographers and the public surveys.

These lands lying adjacent to the stream now known as the East Fork of the Des Moines River, but then known as the Des Moines River itself, were included in approved lists prepared under the act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the joint resolution of March 1, 1861.

Though the words of that resolution and of the law of 1862 admit of a strong argument in favor of the claim that these lands are granted to the State as well as those which can be brought within the description

given in the last-mentioned law, it is the opinion of this department that under the act of 1862 they are to be charged to the State in adjusting the quantity of indemnity. They have been obtained for the object of the grants, and though entertaining some doubt upon the subject, I deem it to be the safer conclusion that it was not the intention of Congress that quantity of the grant and selections should exceed the aggregate quantity of the odd-numbered sections lying within five miles of the Des Moines River, from its mouth to the northern boundary of the State of Iowa.

The proposal to offset a part of the lands inuring to Iowa under the Des Moines grant, against a quantity she had received in excess of the grant of 500,000 acres by act of September 4, 1841, will be sanctioned if it can be done with the assent and under the proper authority of the State; and Messrs. Kilbourne and Mason, in behalf of this State, now, by letters of 17th of February, undertake to complete an arrangement for a settlement.

198 The excess selections under the act of 1841, as you report, amount to 35,473.54 acres.

Measures have heretofore been proposed by the State for reducing this excess, but they have not been carried into effect.

According to the principles above stated, the State has received on account of the grant of 1862, for the improvement of the Des Moines River—

1st. Lands in place	212,147.66
2d. On the East Fork of the river, and under joint resolution of 1861	11,661.60
3d. Special certificate issued	300,000.80
Making a total of	523,809.46

Leaving a balance of land due of 34,191.70 acres.

This balance is nearly equal to the excess certified under the act of 1841, and I am assured that an effort will now be made, on the part of the gentlemen representing the State, for the satisfactory adjustment of this balance.

No further selections will, therefore, be allowed for the present.

I do not think, however, that this department has power, under any of the acts of Congress upon the subject, to enforce against the wishes of the State, an arbitrary offset of the excess of the 500,000 acre grant against this balance due for the Des Moines improvement.

I approve your refusal to sanction the selection of the even-numbered sections within the limits of the grant as indemnity.

Should such selections be allowed, the alternation of the granted and reserved sections would be destroyed.

This alternation is expressly established by the acts of Congress making the grants, and for maintaining the same many good reasons might be assigned.

The papers in the case are now herewith returned.

I am, sir, very respectfully, your obedient servant,

(Signed) J. P. USHER, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

199 Statement showing the extent of the railroad interference with the Des Moines River grant.

Total amount of the certified railroad lists	233,453.00

DUBUQUE AND SIOUX CITY RAILROAD.

Fort Dodge district:		
Six-mile limits	56,473.32	
Fifteen-mile limits	31,537.34	
		88,010.66

IOWA CENTRAL AIR-LINE RAILROAD.

Fort Des Moines district:		
Six-mile limits	46,898.73	
Fifteen-mile limits	49,387.16	
Fort Dodge district:		
Fifteen-mile limits	13,470.96	
		109,756.85

MISSISSIPPI AND MISSOURI RAILROAD.

Fort Des Moines district:		
Six-mile limits	12,071.78	
Fifteen-mile limits	23,613.71	
		35,685.49
Total interference		233,453.00

To His Excellency W. M. STONE, *Governor of the State of Iowa:*

I herewith have the honor to submit to you a report of my labors as agent and commissioner of the State, to attend to any business necessary to be done in the city of Washington, D. C., relative to a grant of lands to the State of Iowa, by act of Congress approved July 12th, 1862, which lands inure to the Des Moines Valley Railroad Company.

I was first appointed agent by Governor Kirkwood, February 18th, 1863. I visited Washington immediately thereafter, and made every possible effort to obtain a certificate to enter the indemnity lands. Great delay in obtaining a certificate was caused by the department not
200 being furnished with a list of the lands sold and conveyed by the State, for which indemnity was to be given.

On the 25th day of April, 1863, the Commissioner of the General Land Office issued a special certificate to enter three hundred thousand (300,000) acres, authorizing the selection of and public lands in the State subject to entry at one dollar and twenty-five cents per acre.

The following is a copy of the special certificate:

Whereas the act of Congress approved the 12th July, 1862, entitled "An act confirming a land grant to the State of Iowa the alternate odd-numbered sections in place and undisposed of, lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of said State"; and whereas said act provides that if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of said act, excepting those released to the grantees of the State of Iowa under the joint resolution of March 2, 1861, the Secretary of the Interior shall set apart an amount of lands within said State to be certified in lieu thereof; and whereas it appears in the preliminary adjustment of said grant that the United States had sold and otherwise disposed of a certain quantity of land prior to the pas-

sage of said act for which the said State is entitled to indemnity under the act aforesaid: therefore, this is to certify that upon the presentation of this paper to any of the land offices in the State of Iowa, accompanied by written authority from the governor, authorizing the party presenting the same, as State agent, to make indemnity selections under said act, it shall and may be lawful for the register and receiver to receive lists of such indemnity selections from such agent, which lists must be verified by the signature of the said agent, attested by the register and receiver, and be accompanied by the certificate that the lands so selected are vacant public lands subject to entry at private sale at $1.25 per acre; the aggregate of such selections to be restricted to three
201 hundred thousand acres, approximate to the actual quantity, to be reduced or increased according to the result of a final adjustment; and no selections to be made unless of tracts in compact form, not less than a quarter section, unless where a fraction of less quantity is selected and taken as equivalent to 160 acres. Upon such selections being filed and verified as indicated and attached to this special certificate the register and receiver are required to make entries accordingly on the plats and records of their office, and make monthly abstract returns to this office of such selections separate from the ordinary monthly returns.

When the aggregate authorized by this certificate shall have been selected, this certificate, with the verified lists, must be returned to this office.

Given under my hand and the seal of this office at the city of Washington, this 25th day of April, 1863.

[SEAL.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land Office.

In the months of July, August, and September of the same year, I caused the 300,000 acres to be entered in the Fort Dodge and Sioux City land districts. I furnished a copy of the lists to the register of the State land office at Des Moines.

On the 23d day of January, 1864, my commission was renewed by your excellency.

While I was in Des Moines in the spring of 1864, I reported to the Commissioner of the General Land Office as follows:

DES MOINES, *March* 9, 1864.

Hon J. M. EDMUNDS,
Commissioner of the General Land Office, Washington, D. C.:

SIR: I have the pleasure to enclose you herewith the list of "indemnity lands" entered by me as agent of the State of Iowa, with a certificate of Governor Stone attached, accepting and confirming the selections.

202 The original "special certificate" for 300,000 acres, and my commission as agent from the governor of Iowa, you will also find attached to the list, agreeably to your instructions.

I am, respectfully, your obedient servant,
D. W. KILBOURNE.

The following is a copy of Governor Stone's certificate:

STATE OF IOWA, *ss:*

I, W. M. Stone, governor of the State of Iowa, do hereby acknow-

ledge the validity of the foregoing selections, which are binding upon the State under the act of Congress of the 12th July, 1862, and hereby apply to the Commissioner of the General Land Office to certify the title to the State accordingly.

In witness whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa. Done at Des Moines, the 21st day of January, 1864.

[SEAL.] (Signed) W. M. STONE.

By the governor:

(Signed) JAMES WRIGHT,
Secretary of State.

The following acknowledgement of the receipt of the list was duly received:

GENERAL LAND OFFICE,
March 17th, 1864.

D. W. KILBOURNE, *Keokuk, Iowa:*

SIR: Your letter of the 9th inst. is received, with lists of indemnity selections at the land office at Fort Dodge and Sioux City, Iowa, under the act of 12th July, 1862.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

203 On the 19th of December, 1863, I addressed the following communication to the Commissioner of the General Land Office:

WASHINGTON, *Dec. 19th*, 1863.

Hon. J. M. EDMUNDS,
Commissioner of General Land Office:

SIR: On behalf of the State of Iowa we hereby request that a complete adjustment of the grant of July 12th, 1862, in extension of the grant of August 8th, 1846, giving lands for the improvement of the Des Moines River, be made at your earliest convenience, and that a certificate be made for the remainder of the lands to be selected as indemnity lands under said grant.

We understand that among the "clear lands" which have been set apart to the State under the said grant of 1862, are some twelve thousand acres which had been selected by the State as school lands under the law of 1841, as amended by a subsequent act of Congress. This land has been selected as school lands as aforesaid, after the passage of the Des Moines River grant of August 8th, 1846. And as that grant was for several years supposed to extend to the source of the river, the State authorities were notified that they could select other lands in their stead.

This, however, was not done, so far as we have been able to ascertain; and when the decision of the Supreme Court of April, 1860, limited the Des Moines River grant of 1846 to the Raccoon Fork, the selection of the twelve thousand acres became good and valid.

We therefore request that the said amount of lands be awarded to the State, and that indemnity lands to the same amount be granted us in their stead. We also understand that some eleven or twelve thousand acres of land lying more than five miles from the Des Moines River proper, and which had been improperly certified to the State as

part of the lands embraced in the Des Moines River grant of 1866 aforesaid, and were therefore included in the relinquishment made to the State of Iowa by the joint resolution of March 2, 1861, have been, or
204 are proposed to be, deducted from the grant made by the act of July 12th, 1862, aforesaid.

Against this we respectfully protest, and ask from you a re-examination of the matter, and a direction to the proper officer that said deduction be not made, but that the whole amount of lands granted to the State of Iowa by virtue of the said act of July 12th, 1862, be set apart to the State accordingly.

In order that the adjustment of the grant may be made final and complete, we hereby relinquish on the part of the State all claim to any lands embraced among the odd-numbered sections along the Des Moines River and within five miles thereof, which now appear to be claimed by pre-emptors, or which for any other reason are not included in the lists of "clear lands" set apart to the State under said grant of July 12th, 1862.

We also request to be informed whether there is anything to prevent us from selecting the even-numbered sections of land along the Des Moines River as part of the indemnity lands to which we are entitled under the grant of July 12th, 1862.

Your certificate, previously given, authorizes us to select any lands now subject to sale at $1.25 per acre. These even-numbered sections are of this class, and we hope to be permitted to select a portion of these lands accordingly.

Very respectfully, your obedient servant,

(Signed) D. W. KILBOURNE.

On the first of March, 1864, the Commissioner denied the requests made in the foregoing communication and confirmed his former decision. From his decision we appealed to the Secretary of the Interior.

From March, 1864, to February, 1865, we persistently urged Mr. Usher, in person and by letter, to consider and decide the case.

Failing in my efforts thus far (as it seemed to me) to convince
205 Mr. Usher that the State of Iowa or her railroad interests were worthy of any consideration at his hands, we decided to make further personal efforts. Accordingly, on the 1st of February, 1865, I went to Washington, and for four weeks I did not fail to call on that dignitary daily, excepting Sundays and a few instances when he named a day to see me, leaving one to three days intervening.

Finally, on the 28th day of February, 1865—eleven months after the papers in the case were placed before him—we were handed his decision in Washington, dated as above.

The questions in the case were simple, and could have been decided by an efficient and competent officer as well by two or three days' consideration as by a whole year, which was taken. I cannot, therefore, divest myself of the conviction that, by causing such unnecessary delay and loss of time and expense, Mr. Secretary Usher imposed upon your agent and trifled with the interests of the State.

I refer to a copy of the decision of Secretary Usher, accompanying this report, marked A.

From this decision we appealed to the President on one point only, to wit, in regard to the 11,661.80 acres of land.

In the absence of any law for such appeal, we obtained the written request of our Senator and Representatives in Congress to the President

to receive the papers in the case and refer them to the Attorney-General.

The present worthy Secretary of the Interior, Mr. Harlan, then Senator, favored us by presenting the papers to the President.

Very soon after this, and before the papers were handed to the Attorney-General, Mr. Lincoln was assassinated, which caused delay of several weeks in referring the papers.

I was in Washington in September last, when I learned that the Assistant Attorney-General had the case in charge, and that a decis-
206 ion might be expected within a reasonable time. I have not yet been advised that the Attorney-General has made his decision.

The Secretary of the Interior claims (as appears by his decision) that from the State of Iowa is due the United States for excess selections of school land under the act of 1841 35,473.54 acres, and that there remains to be selected as indemnity lands 34,191.70 acres, but the Secretary forbids any further selections until there is a satisfactory adjustment of the claim for the above excess.

I proposed, as agent of the State, and consent of the Des Moines Valley Railroad Company, and with the approval of your excellency, to adjust this matter between the United States and the State of Iowa, by an offset of the same number of acres of indemnity lands as are claimed to be due by the State, to wit, 35,473.54 acres.

The balance of the indemnity lands due, as appears by the decision of Secretary Usher, is 34,191.70 acres, which, with 1,281.94 deducted from the 300,000.00 acres heretofore entered, but not yet certified to the State, and added to the 34,191.70 acres above, will make the 35,473.54 acres, and would settle the claim of the United States in full.

The State can then settle with the Des Moines Valley Railroad Company, at $1.25 per acre, for the 35,473.54 acres of land so retained by the United States out of the indemnity lands inuring to said company in settlement of the claim of the United States against the State of Iowa. This would fully adjust this long-standing, troublesome, and, I suppose, just claim of the United States against the State of Iowa. Under this arrangement the State will retain many of the lands of the excess sections which are now very valuable, instead of reconveying them to the United States, as the legislature has heretofore authorized the governor to do.

The Secretary of the Interior decides that the offset will be sanctioned "if it can be done with the assent and under the proper authority of the State."

207 I have conferred with the railroad company, and they will fully sanction the offset; hence, I see no obstacle now in the way of a speedy settlement of the whole matter.

The railroad company express the opinion that for the sum of $35,346.46 paid to Brown & Allender February 5th, 1861, the State should not require interest, inasmuch as the State realized the money for a large portion of these excess selections of 1841, many years ago, and now have an opportunity to settle with the said railroad company for these lands at one dollar and twenty-five cents per acre without interest.

A statement showing the whole area of the grant to the State of Iowa under the 12th July, 1862, and the disposition of the same, marked B; also a statement showing the extent of the railroad interference with the Des Moines River grant, under act of Congress of 1856, marked C, will accompany this report.

Many vexed questions in regard to this grant seemed to arise, growing out of the construction given to the several acts of Congress, and

there has seemed to be a reluctance on the part of the officers of the proper departments to take up and consider the matter.

I have used my best efforts to secure an adjustment of the said land grant, and to get the lands certified to the State.

I am now encouraged to believe that as soon as the proposed settlement by offset can be consummated, I can make a full and satisfactory adjustment with the Commissioner of the General Land Office, so that he will certify the lands to the State without any further delay.

Respectfully submitted.

D. W. KILBOURNE, *Agent.*

KEOKUK, *January 4th*, 1866.

VI. Report of C. C. Carpenter, register of the land office, to the governor of Iowa, Nov. 12th, 1867, as follows:

208 THE DES MOINES RIVER SCHOOL-LANDS.

As heretofore stated, 12,813.51 acres of land included in the lists certified to the State under the mistaken interpretation put upon the act of 8th August, 1846, and subsequently transferred to the Des Moines Navigation and Railroad Company, had been previously approved to the State, viz, on the 20th of February, A. D. 1851, as a part of the donation provided for by act of Congress September 4th, 1841, and known as the 500,000 acre grant.

On the 6th of June, 1853, these lands were ordered into market as school-lands, and 3,394,80 acres were sold by John Tolman, school-fund commissioner of Webster County—the present counties of Webster and Webster and Hamilton both being embraced in Webster at that time.

On the 6th of January, 1854, however, the superintendent of public instruction was notified by the Commissioner of the General Land Office that these lands had been certified on the 30th of December, 1853, as part of the Des Moines River grant. Since that time these lands have oscillated between the Des Moines Navigation and Railroad Company, the Dubuque and Sioux City Railroad Company, the State, the general government, and the 500,000-acre grant; finally becoming an item in the settlement made by Mr. Harvey with the government, and ratified by the State, whereby they were recognized and confirmed unconditionally as a part of the 500,000-acre grant—the same purpose for which they were originally selected by the State, and approved by the Secretary of the Interior.

The Des Moines Navigation and Railroad Company has no title to any portion of these lands; they have not been certified under the joint resolution of 1861, as their approval to the State as school-lands in February, 1851, precluded them from being regranted in 1861, ten years subsequently.

The Government of the United States in the adjustment with the State recognized and treated them as part of the 500,000 acre
209 grant—as may be seen by reference to the terms of adjustment in the settlement made by Mr. Harvey, and has received the advantage arising from the credit in that settlement.

But aside from the title confirmed and established by this adjustment, it seems to me that there could be no question as to the status of these lands, after the decision of the Supreme Court of the United States at the December term, 1859—'60. Other lands under that decision—had it not been for the subsequent decision made a part of this report—might, and undoubtedly would have fallen to the railroads when within the

proper limits; but this 12,813.51 acres must have remained a part of the school-lands.

Nothing seems clearer, then, that when the title of the State under the act of August 8th, 1846, was declared invalid—that being the only adverse right to the one acquired by the State, February 20th, 1851—that of February 20th, 1851, would immediately become valid—a vested right—which no subsequent legislation could either weaken or destroy. And as the 3,394.80 acres sold by John Tolman are a part of these lands, it is difficult to see why the injunction which was served on my predecessor to prevent these lands from being patented to the bona fide purchaser under Tolman has not long since been dissolved.

By no fair construction of the settlement of 1858 could these lands be held as included in those disposed of to the Navigation Company; as they were nearly all sold previous to December 23d, 1853, and all lands sold previous to that date were specially excepted in the settlement; and now this last decision of the Supreme Court, which limits the title to March 2, 1861, makes assurance doubly sure.

If the doctrine of enuring to original grantees is true in reference to the lands which were held by the railroads, and they, as it is claimed, enure to the Des Moines Navigation and Railroad Company under the joint resolution of 1861, since the Supreme Court has swept away other interfering claims, then these lands must have enured to the 500,000-acre grant, under the approval of the Land Department, February
210 20, 1851; and that the government so regarded it is proven by the fact of the recognition and confirmation of this title in a subsequent settlement with the State. And especially must this be true when we consider that the clause in the railroad grants of May 15, 1856, relied upon to exclude the railroads from acquiring title to these lands, viz: "That any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improvement, are reserved from the operation of this act, except so far as it may be found necessary to locate the routes of the said railroads through such reserved land, in which case the right of way shall be granted, subject to the approval of the President"—was not in operation in 1851, and consequently would not invalidate the location of these school-lands within such limits.

I have corresponded with Major O'Conner, attorney-general, in reference to proceeding in court and getting the injunction dissolved, which has prevented these lands from being patented since 1864, so that patents may be issued to the parties who should have received them years ago; and he has promised to do so as soon as the duties pressing upon his time will permit.

If there is any appropriate legislation possible which will hasten this consummation it would be an act of simple justice to these purchasers. The subjoined list designates the land sold by Tolman.

The whole 12,813.51 acres will be found in the first list under the head of Des Moines River grant, in connection with Mr. Harvey's report of settlement.

211 Approved to the State under the 500,000 acre grant.

Parts of sections.	S.	T.	R.	Acres.
W. hf S. W.	5	87	26	80.00
All	7	87	26	597.92
N. hf	9	87	26	320.00
S. hf	15	87	26	320.00
All	19	87	26	609.18
N. hf	21	87	26	320.00
W. hf	23	87	26	320.00
N. W. qr	27	87	26	160.00
W. hf. N. E., E. hf. N. W.	29	87	26	160.00
W. hf. S. E., E. hf. S. W.	29	87	26	160.00
All	31	87	26	605.92
N. fr. hf. N. W., lots 1, 2, 3, 4	1	86	27	241.56
S. hf	11	86	27	320.00
S. W. qr, W. hf S. E.	1	87	27	240.00
N. E. qr	7	87	27	160.00
N. hf	9	87	27	320.00
E. hf	11	87	27	320.00
All	13	87	27	640.00
Lots 3, 4	15	87	27	113.90
All	19	87	27	618.40
N. qr., N. E., N. W., E. hf. S. E., lots 4, 5, 6, 7, 8	23	87	27	475.50
All	25	87	27	604.25
W. hf	27	87	27	320.00
All	29	87	27	640.00
All	31	87	27	626.44
E. hf	33	87	27	320.00
W. hf. N. E., E. hf. N. W., S. E. qr.	31	88	27	320.00
S. E. qr.	3	87	28	160.00
N. E. qr	11	87	28	160.00
E. hf. S. E., N. W. S. E., lots 1, 2 3,	5	88	28	252.44
W. fr hf. N. E. q r.	7	88	28	468.00
E hf., N. hf. N. W.	11	88	28	400.00
S. W. qr	13	88	28	160.00
W. hf. S. W.	17	88	28	80.00
E hf., N. E.	19	88	28	80.00
S. hf	21	88	28	320.00
E. hf	25	88	28	320.00
N. hf S. E. qr	23	98	28	480.00
Total				12,813.51

Sold by John Tolman as school-fund commissioner.

Parts of sections.	Acres.
W. hf. S. W	80.00
All	597.92
S. E. qr	160.00
N. W. S. W., S. hf. S. W., S. hf. S. E	184.74
N. E N. W.	40.00
S. E. S. W.	40.00
All	605.92
N. E N. W., lots 1, 2, 3, 4	204.92
W. hf. S. W.	80.00
N. hf. S. W., W. hf S. E.	160.00
W. hf. N. E.	80.00
E. hf. N. E	80.00
S. E. N. E.	40.00
Lot 4	62.50
S. F. S. E., lot 8	75.75
N. hf. N. E., E. hf. N. W., N. W. N. W., lots 1, 2, 4, 5	382.05
W. hf. S. E	80.00
E. hf. S. E., N. W. S. E	120.00
S. W. qr	160.00
N. W. S. W	40.00
N. hf. S. E, S. E. S. E	120.00
	3,394.80

VII. An act of the general assembly of the State of Iowa, passed March 31, 1868, as follows:

212 SEC. 2. * * * The settlement made and approved June 20th, 1866, by the census board of the State of Iowa with the Des Moines Valley Railroad Company, and the settlement with the United States therein referred to are hereby ratified and confirmed.

VIII. An act of Congress ratifying said settlement, approved March 3d, 1871.

IX. The opinion of C. C. Nourse, attorney-general of the State of Iowa, in response to a letter of inquiry from J. A. Harvey, register of of the land office, as follows:

OFFICE OF ATTORNEY-GENERAL,
Des Moines, Iowa, August 3, 1864.

Hon. J. A. HARVEY,
Register of the State Land Office:

DEAR SIR: I have the honor to acknowledge the receipt of your communication, calling my attention to the provisions of an act of the general assembly of the State of Iowa, approved April 7, 1862, in relation to certain lands contracted to be sold by John Tolman, as school-fund

commissioner of Webster County, and also the release of the Dubuque and Sioux City R. R. Company, executed in pursuance of said act. I am further advised by your communication that the purchasers of said lands from Tolman are paying up their contracts and claiming deeds from the State under the provisions of said law, and my opinion is requested as to what is your duty in the premises.

I have delayed answering your communication until the present time in order to investigate as fully as possible all the facts and the varied and contradictory legislation relating to this subject. From the official report of Hon. Thomas H. Benton, superintendent of public instruction, to the 5th general assembly, made in 1854, and found in the appendix to the house journal of that session, page 99, I gather the following facts connected with the history of these lands:

Under the act of Congress of Sept. 4, 1841, commonly known as the 500,000 acre grant, the commissioners for the State selected 28,378.46 acres of land in Webster County, which selections were approved by the Commissioner of the General Land Office Feb. 20, 1851. Of
213 the lands thus selected, it appears that 12,813.15 acres were in the odd sections within five miles of the Des Moines River, and under the construction afterwards given to the grant of 1846 for the improvement of the Des Moines River the latter were supposed to belong to said grant, and under date of January 6, 1854, the Commissioner of the General Land Office notified the superintendent of public instruction that the locations under the act of September 4, 1841, in certain odd sections in townships 87, 26 W.; 86, 27 W.; 87, 27 W.; 88, 27 W.; 87, 28 W.; 88, 28 W., amounting to 12,813.51 acres, had been revoked, and the same confirmed to the State under the grant of August 8, 1846, for the improvement of the Des Moines River.

This revocation and approval, however, was to a certain extent qualified or conditional, and is in these words:

DEPARTMENT OF THE INTERIOR,
December 30, 1853.

The selections embraced in the within list are hereby approved to the State of Iowa under act of August 8, 1846, without prejudice, if any there be, of other parties.

(Signed) R. M. McCLELLAND,
Secretary.

Prior to this revocation, to wit, on the 6th of June, 1853, the superintendent of public instruction of the State had ordered these lands into market, and authorized the school fund commissioner of Webster County, Mr. Tolman, to sell the same in accordance with the laws of the State then in force for the disposition of the lands of the 500,000 acre grant. It appears from the report of Mr. Tolman, now on file in your office, that under his instructions he sold and contracted from the 27th of August, 1853, to the 10th of January, 1854, inclusive, 3,194.28 acres of these lands, the approval of which as a part of the 500,000 acre grant had thus been conditionally revoked.

After notice of the action of the department at Washington the sales of these lands were stopped, and no bad faith can be attributed to this officer or any of the purchasers.

214 By reference to the records in your office I find that Governor Lowe, under date of May 3, 1858, executed deeds under the seal and in the name of the State of Iowa to the Des Moines Navigation and R. R. Company for nearly if not all of these lands. The conveyances

were executed, as was supposed, in pursuance of the provisions of a settlement made between the State and that company contained in a joint resolution of the 7th general assembly, approved March 22, 1858.

It would be a safe and commendable practice for the State never to make a second conveyance to a different party to the same land until a former deed had been duly canceled or declared null and void by the proper judicial tribunals of the State.

The general assembly has, however, in this case, assumed the responsibility in its subsequent legislation of treating these conveyances to a certain extent as having been made without authority of law, and the question arises how far the executive department of the State should be controlled in these matters by the last expressed will of the legislature. I have concluded on this subject, that if the act of the governor in making these conveyances was not, as to any portion of these lands, authorized by the joint resolution of 1858, or the contracts existing before that time between the State and the Des Moines Navigation Company, that it was competent for the legislature to so far disregard them, and direct a further or different conveyance.

The original contract between the State and the Des Moines Navigation and R. R. Company bears date June 9, 1854. The parties to the agreement as described therein are the Des Moines Navigation and R. R. Company of the first part, and the State of Iowa of the second part.

The 8th section of the contract, which relates to the lands contracted, provides that "the party of the second part covenants and agrees to sell and convey to the party of the first part in manner and upon the terms hereinafter provided all the lands donated to the State for the improvement of the Des Moines River by act of Congress of
215 August 8, 1846, which the said party of the second part had not sold up to the 23d of Dec. 1853."

The 12th section of the same contract refers to the fact that under a prior agreement with Henry O'Reilly, that the river land office for the sale of river lands had been closed on the 23d of December, 1853, and it is undoubtedly true that to this fact is to be attributed the selection and insertion of this particular date. But I do not think that this fact is to control and limit the meaning of the words "disposed of by the State," so as to include only those lands of the grant that had been sold by the "commissioner and register."

Other lands had been sold by the State through its authorized agent as a part of the 500,000 acre grant. The sales had been made in good faith, for a valuable consideration, and the fact of these sales had been a matter of record and public notoriety, of which the parties to the contract must be presumed to have had notice. The State had never in any manner disaffirmed these sales, or sought to do so, and the Commissioner of the General Land Office had expressly reserved the right of these purchases in the conditional approval of the selections as a part of the Des Moines River grant. The joint resolution approved March 23d, 1858, which contains the terms of final settlement between the State and the Des Moines Navigation and Railroad Company, provides for a release by the company of all claims of all kinds against the State of Iowa and the lands connected with the improvement, excepting such as are thereby secured to the company. It then provides for a conveyance to the company by the proper officer of State of "all lands granted by the act of Congress of 1846, which had at that date been approved and certified to the State by the general government, saving and excepting all lands sold or conveyed by the State of Iowa by its

officers and agents prior to the 23d of December, 1853, under said grant."

By an act of the general assembly, approved January 25, 1855, the legislature had recited the facts in relation to the sale of these
216 lands by the school fund commissioner of Webster County, and had, so far as the State was able to do so, made provisions for securing and confirming these titles. Nothing, however, was ever done under said act, and no releases were ever executed by the Des Moines Navigation and Railroad Company as contemplated by its provisions. The act recognized the right of the company to the proceeds of the sales in case the company would quiet the titles by a release. There is, perhaps, nothing important in this act of the general assembly throwing any light on the settlement.

The general assembly of the State, again, by act approved April 2d, 1860, undertook to effect a settlement of this difficulty. The preamble of the act recites that, whereas certain contracts have been entered into between the school fund commissioners, acting under the direction of the superintendent of public instruction, and citizens of the State, for the purchase of a part of the 500,000 acre grant; and whereas the State of Iowa has by a settlement with the Des Moines Navigation and Railroad Company, conveyed said land in whole or in part to said company; therefore, &c. The act then provides for refunding from the State treasury to the purchasers the money at any time paid under the contract with Tolman, upon condition of the surrender and cancellation of the contracts or evidences of title.

It is also expressly provided in this act that its provisions shall not prejudice the rights of those who do not elect to claim under it. Under the provisions of this act six contracts have been surrendered and cancelled, and the moneys paid by the purchasers refunded to them. As to these, I apprehend there can be no question that all their rights to claim conveyances from the State have been extinguished.

The next and last act of the general assembly relating to these lands is the act approved April 7, 1862, and referred to in your communication. The deed transmitted to me was executed by the Dubuque and Sioux City Railroad Company, and is in conformity with the provisions and requirements of the law. It also contains a protest on the
217 part of the Dubuque and Sioux City Railroad Company, stating, "That they have not now and never have had, or never have claimed, any right to the lands in question."

And I think this protest contains the truth. Why this act should have been passed requiring from this railroad company a release of these lands and providing for a reconveyance of them after the year 1864, in certain contingencies, it is hard for me to tell.

The only hypothesis upon which the Dubuque and Sioux City Railroad Company could be presumed to claim any interest in these lands is, that the act of 1846 did not embrace any lands above the Raccoon Fork of the Des Moines River, and that the action of the Commissioner of the General Land Office, in certifying the same as a part of the Des Moines River grant, was null and void; and if this hypothesis be true, it is evident that the act of the Commissioner in revoking the former approval and selections of these lands as a part of the 500,000 acre grant, which was a part of the same act, was equally null and void; and if null and void, the sale by Tolman could not thereby be impaired or affected. How, then, in any event, these lands could have passed to the State under the grant of 1856, as undisposed of lands, I cannot conceive.

I think I may safely advise you that the State should not execute any

reconveyance of these lands in any event to the railroad company, except perhaps a release of what they claim to convey by this deed that is of no right whatever in the lands. The State ought not to execute any conveyance of lands to a party protesting that they have no right or claim thereto, especially when the title has already been complicated by two other conflicting contracts. The act of April 7, 1862, expressly names these lands as sold by John Tolman, as school fund commissioner of Webster County, and requires this conveyance from the railroad company in order to "enable the register of the State land-office
218 to carry out and perform said contracts in all cases where he is called upon to do so by the parties in interest prior to January, 1864"

In my opinion, a conveyance to these settlers of the interest released to the State by this deed, which protests that the grantor has no interest, would be acting in bad faith with those who may now complete their contracts and pay out the purchase money as originally contracted with Tolman. To presume that such was the design of those who passed this law, would be doing violence to the charity due even to a general assembly. I have therefore examined this question with a view of establishing the right of those purchasers upon some substantial basis.

I find by reference to the report of Mr. Tolman, before referred to, that all of these sales except eight were made prior to the 23d of December, 1853. Of these, eighty-two have been cancelled under the act of 1860, leaving less than seven hundred acres of land sold subsequent to that date. I have, therefore, concluded to advise the issuing of patents upon these original contracts upon the payment of the purchase-money and interest as originally contracted, in all cases where the lands were contracted prior to the 23d of December, 1853, and have not been rescinded under the act of 1860; and to refuse the same in all contracts subsequent to that date until the parties, by proper judicial proceedings, cancel the outstanding conveyance to the Des Moines Navigation Company. I advise this not upon any question as to the extent of the grant of 1846, but upon the ground that under the act of settlement of 1858, and the prior contract with the company, the conveyances of the lands sold prior to December, 1853, were not authorized by the law of the State, and that the general assembly might so far properly order another or different conveyance of them.

I am aware that many doubts may exist in regard to the correctness of this conclusion, and they have occurred to my own mind. If
219 other parties interested are not satisfied with the solution of the difficulty, they may perhaps control your action in the matter by proper judicial proceedings. Some course, however, must in the first place be determined upon, and this appears to my mind the most satisfactory solution of the difficulties surrounding the subject.

Very respectfully yours,

C. C. NOURSE.

X. The sale of the premises in question by John Tolman, school-fund commissioner, as follows:

List of names; lands applied for July 18th, 1853. William T. Woolsey, W. ½ of SE. ¼ and N. ½ of SW. ¼, S. 1, 87, 27.

List of lands sold for cash and credit, commencing August 18, 1853, in Webster County, Iowa, by John Tolman, school-fund commissioner:

Name of purchaser, Wm. T. Woolsey. Date of contract, Aug. 20, 1853. Parts of section W. ½ of SE. ¼ and N. ½ of SW. ¼, section 1 township 87, range 27. 500,000 acres, 160. Price per acre, $1.25. Cash $200.00.

STATE OF IOWA,
OFFICE REGISTER OF THE STATE LAND OFFICE,
Des Moines, April 2, 1875.

I, David Secor, register of the State land office of the State of Iowa, hereby certify that the following is a true copy of the report of John Tolman, school-fund commissioner of Webster County, Iowa, as the same appears on file in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the date above writen.

DAVID SECOR, *Register*.
By JOHN M. DAVIS, *Deputy*.

220, 221 *Report of John Tolman, School Fund Commissioner of Webster County, to the Superintendent of Public Instruction, of the lands in the odd numbered sections within the five miles limits of the Des Moines River, sold by him as a portion of the* 500,000 *acre grant.*

Name of purchaser.	Date of contract.	No. of lot.	Parts of section.	Sec.	T.	R.	No. of acres.	Price ₱ A.	Cash.	Credit.
Evan Lewis	Aug. 27, 1853		SE. qr. of SE. qr	25	88	28	40	$1 25	$12 50	$37 50
Jacob Kraus	Sept. 2, 1853		SE. of SE. E. hf. of SW. qr. of SE. qr	19	87	26	60	1 25	75 00	
Roscow Royster	Aug. 18, 1853		W. hf. of SW	5	87	26	80	1 25	25 00	75 00
William A. Scott	Aug. 18, 1853		SW. qr	7	87	26	140	1 25	43 83	131 00
Jesse Goodrich	Aug. 20, 1853		E. hf. of NE	11	87	27	80	1 25	100 00	
William T. Woolsey	Aug. 20, 1853		W. hf. of SE., N. hf. of SW	1	87	27	160	1 25	200 00	
Thomas G. Pierce	Aug. 20, 1553		NW. qr	7	87	26	137. 64	1 25	172 05	
Robert Allcorn	Aug. 20, 1853		SE. qr. of NE. qr	13	87	27	40	1 25	50 00	
John Tollman	Sept. 7, 1853		N. hf. of SE. qr	25	88	28	80	1 25	100 00	
John Ware	Sept. 9, 1853		NW. qr. of SW. qr	17	88	28	40	1 25	12 50	37 50
Perlonzo Bell	Sept. 9, 1853	1, 2, 3, & 4	W. hf. of NW. qr	31	87	26	62. 68	1 25	78 37	
Perlonzo Bell	Sept. 19, 1853		NE. qr. of NW. qr	1	86	27	204. 92	1 25	255 89	
Eleazer Russell	Oct. 1, 1853		NE. qr	7	87	26	160	1 25	50 00	150 00
Francis W. Allen	Oct. 1, 1853		E. hf. of SE. qr	5	88	28	80	1 25	100 00	
Francis W. Allen	Oct. 19, 1853		NW. qr. of SE. qr	5	88	28	40	1 25	12 50	37 50
John B. Skinner	Oct. 19, 1853		NW. qr. of SW. qr	19	87	26	32. 37	1 25	10 12	30 56
John B. Skinner	Nov. 12, 1853		NE. qr. of NE. qr	25	87	27	40	1 25	12 50	37 50
John Gaylor	Nov. 28, 1853		W. hf. of NE. qr	7	87	27	80	1 25	25 00	75 00
Isaac Murphy	Nov. 28, 1853		NW. qr. of SE	7	87	26	40	1 25	12 50	37 50
Leander Boher	Dec. 6, 1853		W. hf. of SW. qr	11	86	27	80	1 25	25 00	75 00
Solomon Bathler	Dec. 9, 1853		W. hf. of SE. qr	15	87	26	80	1 25	25 00	75 00
Francis McGuire	Dec. 12, 1853	4	SE. qr	15	87	27	62. 50	1 50	93 75	
Ebenezer H. West	Dec. 12, 1853	1, 2, 4, & 5	S. hf. of SW. qr., W. hf. of SW. of SE. qr	19	87	26	92. 37	1 25	20 87	86 59
Benjamin Corban	Dec. 13, 1853		E. hf. of NW. qr., NW. qr. of NW. qr	25	87	27	302. 05	1 25	94 37	283 30
James Corban	Dec. 20, 1853		NW. of NE	25	87	27	40. 00	1 25	12 50	37 50
Samuel K. Barnes	Dec. 27, 1853		SW. qr	13	88	28	160. 00	1 25	200 00	
Isaac Murphy	Jan. 2, 1854		E. hf. of SE. qr. and SW. qr. of SE. qr	7	87	26	120. 00	1 25	37 50	112 50
George C. Goss	Jan. 3, 1854	8	W. hf. of SE. qr	31	87	27	80. 00	1 25	25 00	75 00
Lodowick Maricle	Jan. 4, 1854		SE. qr. of SE. qr	23	87	27	76. 75	1 25	19 18	57 56
David A. Eckerson	Jan. 7, 1854		NE. qr. of NW. qr	21	87	26	40. 00	1 25	12 50	37 50
Peter Byram	Jan. 7, 1854		E. hf. of SE. qr	15	87	26	80. 00	1 25	25 00	75 00
James Craig	Jan. 10, 1854		SE. qr. of SW. qr	29	87	26	40. 00	1 25	50 00	
Wesley M'Kinney	Jan. 10, 1854		NE. qr., E. hf. of NW. qr	31	87	26	240. 00	1 25	75 00	225 00
John Everhart			S. hf	31	87	26	303. 00	1 25	94 77	284 29

OFFICE OF SCHOOL FUND COMMISSIONER, WEBSTER COUNTY,
October 23, 1854.

I hereby certify that this is a correct (copy) of all the lands sold by me on odd sections as school lands in this county at the times the dates appear on the list.

JOHN TOLMAN,
School Fund Commissioner, Webster County, Iowa.

222 XI. A patent from the State of Iowa to the defendant Woolsey, as follows:

Certificate No. 3808.

THE STATE OF IOWA:

To all to whom these presents shall come, greeting:

Whereas, William T. Woolsey, of Webster County, Iowa, has deposited in the office of the secretary of state of the State of Iowa a certificate of the school fund commissioner of Webster County, Iowa, whereby it appears that full payment has been made by the said William T. Woolsey, according to the provisions of the act of the general assembly of the 25th of February, 1847, entitled "An act to provide for the management and disposition of the school fund" for the west half of the southeast quarter and the north half of the southwest quarter of section one (1), township eighty-seven (87) north, range twenty-seven (27) west of the fifth principal meridian, containing one hundred and sixty (160) acres, according to the official plat of the survey of the said lands, returned to the General Land Office of the United States, by the Surveyor-General, which said tract has been purchased by the said William T. Woolsey:

Now, know ye, that the State of Iowa, in consideration of the premises, and in conformity with the several acts of the general assembly, in such cases made and provided, have given and granted, and by these presents do give and grant unto the said William T. Woolsey, and to his heirs and assigns, the said tract of land above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said William T. Woolsey, and to his heirs and assigns forever.

In testimony whereof, I, James W. Grimes, governor of the State of Iowa, have caused these letters to be made patent, and the great seal of the State of Iowa to be hereunto affixed.

223 Given under my hand at Iowa City, the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-four, and the State of Iowa the ninth.

By the governor:

JAMES W. GRIMES.

GEO. W. MCCLEARY,
Secretary of State.

Recorded in Vol. 5, page 133, State land-office, Des Moines, Iowa.

I, Aaron Brown, register of the State land-office of the State of Iowa, certify that the above is a full, true and *and* correct copy of the patent issued to William T. Woolsey for the land therein described, as the same appears of record in this office. Given under my hand and official seal this 8th day of May, 1874.

AARON BROWN, *Register*,
By JOHN M. DAVIS, *Deputy*.

224 In the circuit court of the United States for the district of Iowa.

RICHARD B. CHAPMAN
vs.
WILLIAM T. WOLSEY AND OTHERS.

It is hereby stipulated by the solicitors for the complainant and de-

fendants named in the above entitled cause, that the foregoing acts and resolutions of the Congress of the United States; acts and resolutions of the general assembly of the State of Iowa; the letters, lists of lands, copies from plat and tract book of the district land office of the United States for the district of Fort Dodge and Des Moines; copy contract; deposition of A. J. Harvey; extract and list from the report of the register of the State land office of Iowa, for 1869, and all other documents in the foregoing attached list, may be offered, read, and put in evidence by the complainant on the hearing of this cause without producing the originals thereof, and without any other further proof of the same than this stipulated, and with the same force and effect as though the originals of the same, duly certified and authenticated, had been offered and put in evidence, subject only to defendants' objections for incompetency, irrelevancy or immateriality, which objections may be argued upon the argument of said cause.

And it is further stipulated that complainant is, and was, at the time of the commencement of this action, a citizen of the State of New York, and that the land described in the bill herein is of the value of five thousand dollars.

225, 226 And it is further stipulated that since the commencement of this action against Wm. T. Wolsey, the said land has been conveyed to Jeanette Wolsey, his then wife, and that since such conveyance she has died intestate, leaving the other defendants, except the State of Iowa, her heirs-at-law.

It is understood that this stipulation applies as well to the evidence to be offered by the defendants as to the complainant.

GALUSHA PARSONS,
Defendants' Attorney.
THEO. HAWLEY,
Complainant's Attorney.

227 On the 17th day of October, the same being of the October term, 1874, of said court, there appears among the records of the proceedings thereof in said cause, the following entry, to wit:

228 United States circuit court, district of Iowa, Oct. term, 1874. Saturday, Oct. 17th, 1874.

R. B. CHAPMAN *vs.* WILLIAM T. WOOLSEY. } No. 521. Eq.

This cause came on this day. The complainant, by leave of court, files an amended bill herein, and Galusha Parsons, esq., is hereby appointed guardian ad litem for the minor heirs, defendants here.

229 On the 20th day of May, the same being of the May term, 1875, of said court, there appears among the records of the proceedings thereof in said cause the following entry, to wit:

230 United States circuit court, district of Iowa, May term, 1875, Thursday, May 20th, 1875.

R. B. CHAPMAN *vs.* W. T. WOOLSEY ET AL. } No. 521. Eq.

This cause came on this day. Pl'ff appears by Hawley, and def'ts by

Parsons, and the cause is submitted to the court and written arguments to be filed by plaintiff within forty days from this date, and by defendants within 20 days thereafter.

231 Afterwards, to wit, at the same term of said court, the same being on the 3d day of August, 1875, there appears among the records of the proceedings thereof in said cause the following entry, to wit:

232 United States circuit court, district of Iowa, May term, 1875, Tuesday, August 3rd, 1875.

RICHARD B. CHAPMAN
vs.
WM. T. WOOLSEY ET AL., AND THE STATE OF Iowa. } No. 521. Eq.

At this term of this court The Des Moines Navigation and Railroad Company filed its petition in this action to be made party plaintiff or for leave to file an argument herein, and on the hearing of the said motion, it appearing that said Des Moines Navigation and Railroad Co. is interested in this action as grantor of the complainant to the tract of land in controver'y, and has an interest in sustaining the complainant's title to said tract, it is therefore ordered that the said Des Moines Nav. and R. R. Co. have leave to appear and file an argument in this case within thirty days, and also leave to file an argument in reply to argument of def't.

233 U. S. circuit court, district of Iowa.

RICHARD B. CHAPMAN
vs.
WM. T. WOLSEY AND AL., AND THE STATE of Iowa. } In equity.

To the judges of the circuit court of the United States for the district of Iowa.

The petition of the De Moine Navigation and Railroad Company respectfully shows to this court:

1. That your petitioner, the Des Moine Navigation and Railroad Company, is a corporation duly organized and created under the laws of this State about the year 1854.

234 2. That this is an action by Richard B. Chapman, to set aside a patent granted by the State of Iowa to the defendant Wm. T. Wolsey, on or about the 24th day of Dec'r, 1854, to the west half of the southeast quarter of sec. one (1), in township eighty-seven (87) north of range No. twenty-seven (27) west of the 5th p. m., Iowa, and that said Chapman claims title to the said tract under a deed from your petitioner.

3. And your petitioner further shows that the tract in controversy lies within five miles of the Des Moines River above the Raccoon Fork, and is included and embraced in and part of and parcel of the lands certified and approved to the State of Iowa by the United States under the act of Aug. 8, 1846. Under the act, the action of the President and the heads of the several departments of the government themselves,

the subsequent legislation of Congress concerning the lands above the Raccoon Fork by joint resolution of March 2d, 1861, and the act of July 12th, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes," the conveyance by the State to
235 petitioner and the acts of the State, its agents, and legislature, and the conveyance by petitioner to said plaintiff, he claims title to the said tract.

4. The defendants claim that the tract passed to the State as part of the 500,000 acre grant, under the 8th section of the act of Sept. 4, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands" and to "grant pre-emption right," and to him, Wolsey, by his patent from the State.

5. And your petitioner shows that he has an interest in the matter in litigation, and in the success of the plaintiff herein. And that the failure of the plaintiff in this action will subject the petitioner to a repayment of the purchase-money paid by said plaintiff for said tract.

6. And your petitioner shows that the facts upon which his title rests are fully set out in the bill of the complainant herein, and the bill is in all respects one which presents the petitioner's relations to said tract and his title thereto, and his relations to the said plain-
236 tiff, Chapman, in the premises, and he prays leave to adopt the said complainant's bill as the bill of petitioner in this action and that he may be made plaintiff herein, jointly with the said Richard B. Chapman or otherwise, or that he may have leave to appear and file an argument in his own behalf.

7. And petitioner prays leave to make the said bill of the complainant, referred to by him, part of this petition on the hearing hereof.

(S'g'd) J. M. ELLWOOD,
Sol'r for Petitioner.

STATE OF IOWA,
Polk County, ss:

John Browne of said county being duly sworn, deposes and says that he is an acting executive officer of the De Moine Navigation and Railroad Company, residing in the State of Iowa; that the facts set forth in the foregoing petition are true to his knowledge, except as to the matters therein stated on information and belief; as to those matters he believes it to be true.

(S'g'd) J. BROWNE.

237 Sub. and sworn to before me this 30th day of Aug., 1875, *before me.*

Subscribed and sworn to by J. Browne before me this 3d day of August, A. D. 1875.

[SEAL.] (S'g'd) WM. P. BENTLY,
Notary Public, Polk County, Iowa.

(Endorsed:) 521. Richard B. Chapman and al., vs. Wm. T. Wolsey and al. Motion to be made party by De M. Nav. and R. R. Co. Filed Aug. 3, '75. George B. Corkhill, clerk.

238 Afterwards, to wit, on the 16th day of June, 1876, the same being of the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

239 United States circuit court, district of Iowa, May term, 1876. Friday, June 16, 1876.

RICHARD B. CHAPMAN
vs.
WILLIAM T. WOLSEY, MARY J. PIERCE, ANN Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, Atta Wolsey, children and heirs-at-law of Jeannette Wolsey, deceased, and the State of Iowa. } No.

This cause came on to be heard at the present term, and was argued by counsel; whereupon, upon consideration thereof, it is ordered, adjudged, and decreed that none of said defendants have any right, title, or interest to or in the west half of the southeast quarter of section number one (1), township eighty-seven (87) north, of range twenty-seven 27) west, of the fifth principal meridian, in the State of Iowa, the
240 premises in said bill of complaint mentioned and described; that the title of complainant thereto, as set out in his said bill of complaint, is paramount and superior to any title of defendants or any of them thereto; that said patent therefor in said bill of complaint mentioned, and issued as therein set forth, on the 21st day of December, 1854, by the defendant, the State of Iowa, to the defendant, William T. Wolsey, and the said conveyances thereof by said William T. Wolsey to Elijah Pierce, and by said Pierce to Jeannette Wolsey, conferred no right or interest upon any of said defendants as against complainant's said title, as in his bill of complaint set forth; that complainant's said title to said premises be, and the same hereby is confirmed, forever quieted and declared valid and absolute as against any and all claims of any of said defendants thereto; that said defendants severally be, and they are hereby enjoined from asserting any title or claim thereto as against complainant's said title.

241 And it is further ordered, adjudged, and decreed, that the defendant, William T. Wolsey, and the State of Iowa, within thirty days pay the costs herein taxed at $, and in default thereof that execution therefor issue.

(Signed) J. M. LOVE.

242 On the same day, to wit, June 16, 1876, the defendants by their att'ys filed in said clerk's office, in said cause, their appeal-bond, which said appeal-bond is in the words and figures following, to wit:

243 In the circuit court of the United States in and for the district of Iowa.

RICHARD B. CHAPMAN
against
WILLIAM T. WOLSEY, MARY J. PIERCE, ANN Henry, George Wolsey, Lewis Wolsey, Fremont Wolsey, Clark Wolsey, Hopkins Wolsey, Atta Wolsey, and the State of Iowa.

Know all men by these presents, that we, Samuel J. Kirkwood, William Christy, B. R. Sherman, and Josiah T. Young, are held and firmly bound unto Richard B. Chapman in the sum of eight hundred dollars, to be

paid to the said Richard B. Chapman, his administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs executors, and administrators. Dated this fourteenth day of June, 1876,
The condition of the above obligation is such, that whereas the above-
named respondents have prosecuted an appeal to the Supreme
244 Court of the United States to reverse the judgment or decree rendered in the above-entitled suit in the circuit court of the United States in and for the district of Iowa, at a term thereof held at the city of Des Moines on the 2nd Monday of May, 1876:

Now the condition of the above obligation is such, if the above-named respondents shall prosecute their said appeal and answer all damages and costs, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

(S'g'd)	SAMUEL J. KIRKWOOD.	[SEAL.]
(")	WM. CHRISTY.	[SEAL.]
(")	B. R. SHERMAN.	[SEAL.]
(")	JOSIAH T. YOUNG.	[SEAL.]

Approved in open court June 16th, 1876.
(Signed) J. M. LOVE, *Judge.*

(Endorsed:) No. 521. Eq. R. B. Chapman vs. William T. Wolsey et al. Appeal bond. Filed June 16, 1876. E. R. Mason, clerk.

245 In the circuit court of the United States in and for the district of Iowa.

RICHARD B. CHAPMAN *agt.* WILLIAM T. WOLSEY, THE STATE OF IOWA, and others.

It is hereby stipulated that the matter in controversy herein exceeds the amount of five thousand dollars, exclusive of costs.

(Signed) THEO. HAWLEY, *Sol. for Complt.*
(") GALUSHA PARSONS, *People's Sol. and Gaurd. ad li.*

Assignment of error.

It is submitted that the court erred—

I. In holding that the lands were not public lands at the date of their selection under the act of September 4, 1841.

II. In holding that they were reserved within the meaning of the exception contained in that act.

III. In holding that the conveyance to Wolsey was void because the land was sold to him as school land, and that the execution of the trust could be judicially examined at the suit of a private citizen.

IV. In holding that it was not competent for the State to select the land in question under the act of 1841.

V. In holding that an extension of the Des Moines River grant subsequent to the conveyance by the State to Wolsey, would defeat his title and enure to complainant's benefit as the holder of a subsequent conveyance.

VI. In holding that it was not competent for the State so long as the grants remained unadjusted to make an adjustment with the general government which should bind these parties.

VII. In holding that under the contract with the D. M. N. Co., and the joint resolution authorizing a settlement with it, this land which had been sold prior to December 23, 1853, was not within the exception in the contract and resolution.

GALUSHA PARSONS,
Of Counsel for Appellants.

246 In the circuit court of the United States, for the district of Iowa.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true and complete copies of the transcript from district court Webster County, printed abstract, record entries, and final decree and appeal bond, in a certain cause adjudicated in said court wherein Richard B. Chapman was plaintiff, and Wm. T. Woolsey et al. were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 26 day of June, A. D. 1876.

[SEAL.]

ED. R. MASON,
Clerk U. S. C. C. District of Iowa.

(Indorsement on cover:) No. 332. William T. Wolsey et al., & the State of Iowa, appellants, vs. Richard B. Chapman. Iowa C. C. U. S. Filed 3rd February, 1877.

REC. 332—9

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1876.

WILLIAM T. WOLSEY, THE STATE OF IOWA, AND OTHERS,
Appellants,

against

RICHARD B. CHAPMAN, *Appellee.*

ARGUMENT.

GALUSHA PARSONS,
AND JOHN A. HULL,
of Counsel for Appellants.

KENYON & PIERSON, Legal Printers, Des Moines, Iowa.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

WILLIAM T. WOLSEY, THE STATE OF IOWA, *and others*, *Appellants*,

against

RICHARD B. CHAPMAN. *Appellee.*

STATEMENT.

This suit was brought in the district court of the state of Iowa, to cancel a patent issued by the state to the appellant W. T. Wolsey. The complainant claimed title to the land under the grant of August 8th, 1846, to the territory of Iowa as extended by the joint resolution of March 2, 1861, and the act of July 12, 1862, to aid in the improvement of the Des Moines river. The defendant instead of claiming title directly from the United States as was claimed by the defendant in Welles against Reilly, or by general grant involving only a construction of the act of congress, as in the railroad cases which have been in this court, claimed under a patent from the state, by which it conveyed the land as a part of its selection under the eighth section of the internal improvement act of September 4, 1841, appropriated in the state of

Iowa with the consent of congress to the support of schools. The cause was removed by the complainant into the circuit court of the United States, and before any further proceedings were had, the legislature of Iowa passed an act — Pri. L. 1874, p. 25 — directing that defense be made in the name of the state. The complainant accordingly amended his bill making the state a party. It was conceded by the complainant that the title derived by Wolsey from the state was valid unless the lands were taken out of the operation of the act of 1841, by reason of their having been reserved prior to their selection under that act, on account of the conflict of opinion as to the extent of the Des Moines river grant. It was claimed by complainant's counsel that although the reservation was not "by law of congress or proclamation of the president of the United States," yet if it was by any competent authority, that it was within the *construction* to be given to the exception contained in that act The counsel for the respondents claimed that it was not within the exception unless the land was reserved in the particular way named in the act, *by law or proclamation.* The court was understood to have adopted this view of it, so far as the *exception* is concerned, but it held that if the lands were reserved in any way at the time of the selection they were not "public lands" within the meaning of those terms as used in the grant, and this entirely independent of the exception contained in it.

We suppose it will be wholly unnecessary for your honors to look into the evidence. So far as the complainant's title is concerned it may be conceded that it is the same as in the cases heretofore before this court. The defendant's title as already stated is under a different act containing different terms of exception, and instead of claiming under the state by a grant in general terms of "so much" as was granted by an act of congress, and necessarily referring to that act to ascertain what was granted, he purchased the particular land in controversy, and received a patent in which it was prop-

erly described. Upon this branch of the case as upon the other there is no controversy as to the facts.

ABSTRACT OF PLEADINGS.

The bill states—

1. The complainant's ownership of the premises claimed, to-wit: the west ½ se ¼, S. 1, 87, 27, w. of 5 p. m. Iowa.

2. That the premises are within five miles of the Des Moines river.

3. A conveyance by the state to the De Moine N. Co. May 3, 1858, and by the latter to himself.

4. The grant by congress to the territory of Iowa August 8, 1846, that the lands were reserved by the officers of the land department of the government, and that from October, 1851, to January, 1854, they were from time to time certified to the state as falling to it under that grant.

5. The extension of the grant by joint resolution March 2, 1861, and by act of congress July 12, 1862.

6. That defendants claim the land as a portion of the 500,000 acre grant, under the 8th section of the act of September 4, 1841. That they were erroneously approved to the state under that grant about the 5th of March, 1851, which approval was subsequently, December 30, 1853, revoked by the commissioner of the general land office and secretary of the

interior. That the patent held by W. T. Wolsey was issued to him subsequently to such revocation. That the state claims the land under the 500,000 acre grant.

The answer of W. T. Wolsey contains—

1. A general denial of the allegations of the bill.

2. That the land was granted to the state by the act of September 4, 1841, and that he purchased it from the state as a part of said grant August 20, 1853.

3. The statute of limitations.

4. That the De Moine N. Co. was not incorporated, but that nevertheless it claimed to act as a corporation; that the deed under which plaintiff claims, was executed at the city of New York, without being in any way authorized by its board of directors.

5. That the agreement was made with the Company without authority; that the governor was in no way authorized to convey the lands; that the defendant was a *bona fide* purchaser from the state, and that the title which the state received by the joint resolution of March 2, 1861, enured to his benefit. That up to the 30th of March, 1866, the grant remained wholly unadjusted, and that upon that day the state by act of the legislature appointed a commissioner to procure an adjustment of it. That on the 20th of June, 1866, a final adjustment was made, and this land secured to the state as a part of the 500,000 acre grant. That this adjustment was confirmed by act of the legislature of Iowa March 31, 1868, and by act of congress March 3, 1871.

The answer upon the part of the state alleges—

1. That the land was selected under the 500,000 acre grant and sold by the state to W. T. Wolsey as such. That upon its settlement with the company this land was expressly excepted from the land agreed to be conveyed, as having been sold by it prior to December 23, 1853, and that the subsequent conveyance by the governor was wholly unauthorized; that the deeds signed were prepared by the agents of the Company and were fraudulently represented not to include any land sold by the state prior to the date last mentioned. It further sets up the settlement as in the answer of Wolsey, and its confirmation.

2. That the land was not embraced in the Des Moines river grant, and that the De Moine N. Co. was not a *bona fide* purchaser thereof.

All of the other defendants adopted the answer of W. T. Wolsey except those who are infants, who by their guardian filed a general answer. There was a general replication to all of the answers.

Abstract of the Evidence.

As said above we suppose it will not be necessary for your honors to look into the evidence as there is no question as to what facts were proved, and none as to their effect, except as to the *correspondence* by which complainant claims to have established a reservation of the lands prior to their selection under the grant under which defendant's claim, in regard to

that the debate is as to the effect of this correspondence with reference to the exception contained in this act. It is not claimed that they were reserved by act of congress or by a proclamation of the president of the United States, unless this correspondence is equivalent to such a proclamation.

The complainant's evidence is substantially—

1. The grant to the state August 8, 1846.

2. A large number of letters by different commisssoners of the general land office, secretaries and attorneys general, showing a conflict of opinion as to the extent of the grant, and that the lands were withheld from sale on account of this conflict.

3. That the lands were certified to the state as a part of this grant December 30, 1853.

4. A contract between the commissioners of the Des Moines river improvement and the D. M. N. & R. R. Co. June 9, 1854, by which the state agreed to convey to the company all the lands granted to it by that act which it had not sold or conveyed prior to December 23, 1853.

5. A settlement between the state and the Company March 22, 1858, by which the state agreed to convey to the Company all the lands embraced in the grant except such as it had sold or agreed to sell prior to December 23, 1853, *under said* grant.

6. A deed by the governor May 3, 1858.

7. A deed by the Company to plaintiff February 17, 1858.

8. A joint resolution of congress to *quit* title, etc., March 2, 1861.

9. An act of congress confirming a land claim, etc., July 12, 1862.

10. A letter from the commissioner of the general land office to the register of the Iowa state land office informing him that the lands fell to the state under the act of August 8, 1846, and requesting *him* to cancel their approval as a part of the grant of September 4, 1841.

The respondents' evidence is—

1. The internal improvement act of congress of September 4, 1841. The acceptance of the grant by the state, appropriating it for the use of schools and the consent of congress to the diversion.

2. The selection of this land as a part of that grant June 20, 1850.

3. The approval and certification of the lands by the secretary March 5, 1851.

4. The purchase by W. T. Wolsey of the school fund commissioner and full payment by him August 20, 1853.

5. Patent by the state to Wolsey December 23, 1854.

6. An act of the legislature of Iowa appointing a commissioner to adjust these grants with the officers of the general government, and specially instructing him to secure these lands as a part of the 500,000 acre grant, March 30, 1866.

7. A settlement made in pursuance of the above act, June 20, 1866.

8. The ratification of this settlement by the legislature of Iowa March 31, 1868, and by congress March 3, 1871.

The several acts of the legislature and of congress were treated as *evidence* and are made part of the transcript and printed as such.

ARGUMENT.

We suppose the case to involve the following questions, and that the decree in favor of the complainant necessarily implies a ruling upon each of them adverse to the respondents.

I. Would a grant of "public land" in the absence of an express exception be construed to embrace reserved lands.

II. If there *might* be a reservation of such a character as to be excluded upon a mere construction of the meaning of those terms as used in that act, would it follow that they should receive the same construction in all other acts and in respect to every other class of reservations without regard to the manner or the purpose for which they were made.

III. If in a grant containing no exception the words public land would be held to include reserved lands, and all reserved lands, would they have that effect when used in a grant containing an exception of lands reserved in a particular manner and for a particular purpose.

IV. When lands are granted to a state under two or more different acts of congress under either of which it might hold them were the others out of the way, can a title made under either be impeached at the suit of a private citizen ; or could a junior patentee maintain an action to cancel the prior patent because the state in making it had violated its trust.

V. This court having decided in 1859 that the original Des Moines river grant did not extend above the Raccoon fork, and congress having subsequently extended the grant by releasing all the title which the United States still retained to such lands as were then held by *bona fide* purchasers from the state, Wolsey being such a purchaser will not the title then acquired by the state enure to his benefit although he was not a purchaser under the Des Moines river grant.

VI. Wolsey having purchased and fully paid for the land after it was selected and certified as school land, and before such certification was revoked by the commissioner of the land office, was his title divested by such attempted revocation.

VII. The settlement between the state and the general government having been both authorized and confirmed by the state, and ratified by act of congress, is conclusive.

VIII. By the contract with the De Moine Navigation Company the state agreed to sell and convey to it "all of the lands donated to the state of Iowa by act of congress of August 8, 1846, which it had not sold up to the 23d day of December, 1853." By the joint resolution proposing terms of settlement with the Company, it agreed to convey all such lands "saving and excepting all lands sold or agreed to be sold or conveyed by the state of Iowa by its officers and agents prior to the 23d day of December, 1853, *under said grant.*"

In directing a decree in favor of the plaintiff it is submitted that the court erred—

I. In holding that the lands were not public lands at the date of their selection under the act of September 4, 1841.

II. In holding that they were reserved within the meaning of the exception contained in that act.

III. In holding that the conveyance to Wolsey was void because the land was sold to him as school land, and that the execution of the trust could be judicially examined at the suit of a private citizen.

IV. In holding that it was not competent for the state to select the land in question under the act of 1841.

V. In holding that an extension of the Des Moines river grant subsequent to the conveyance by the state to Wolsey, would defeat his title and enure to complainant's benefit as the holder of a subsequent conveyance.

VI. In holding that it was not competent for the state so long as the grants remained unadjusted to make an adjustment with the general government which should bind these parties.

VII. In holding that under the contract with the D. M. N. Co., and the joint resolution authorizing a settlement with it, this land which had been sold prior to December 23, 1853, was not within the exception in the contract and resolution.

I.

RESERVATION.

Were the lands public land at the date of their selection under the eighth section of the act of 1841, under which respondents claim.

The act reads—

And be it further enacted, That there shall be granted to each state specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement; *Provided*, that to each of the said states which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such state has already received as aforesaid, make five hundred thousand acres, the selections in all of the states, to be made within their limits respectively in such manner as the legislature thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land (except such as is or may be reserved from sale by any law of congress or proclamation of the president of the United States) which said locations may be made at any time after the lands of the United States in said states respectively, shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new state that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such state before its admission, and while under a territorial government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

In *The Dubuque and Pacific Railroad Company against Litchfield, 23 How., 66*, this court decided that the grant of

1846 known as the Des Moines river grant did not extend above the Raccoon fork. Had there been no conflict of opinion as to the extent of that grant, of course there would have been no question as to the right of the state to select this land, under the act by which we claim, as it is situated above that point. In *Wolcott against The De M. N. Co., 5 Wall., 681*, this court decided that the lands above the Raccoon were reserved by competent authority within the meaning of the proviso contained in the railroad grant to the state of Iowa of May 15, 1856. That proviso reads—

> *And provided further*, That any and all lands heretofore reserved to the United States, by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the president of the United States.

In Welles against Reilly not reported, it decided that the reservation was of such a character as to take the lands out of the pre-emption law, section ten of the act of 1841. That section so far as material here reads—

> No lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the state of Indiana, or which may be acquired of the Wyandot tribe of Indians in the state of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no section of land reserved to the United States alternate to other sections granted to any of the states for the construction of any canal, railroad, or other public improvements; no sections or fractions of sections included within the limits of any incorporated town; no portion of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act.

It is conceded that the reservation existed at the time this land was selected by the state under the act under which we claim, but it is submitted—

1. That notwithstanding the reservation it was still *public land.*

2. That no other reservation than one made in the way indicated in the act would deprive the state of the right to select it.

That it was public land in such a sense that congress *might* have granted it we suppose will not be denied. It is then simply a question of construction, what did congress *intend* to grant? The statute says *any* public land except such as may be reserved by law of congress or proclamation of the president. If this was public land in any sense, it is public land within the meaning of this act, unless there is something in its language which shows that congress intended to use those words in a limited sense. We submit that the language of the act shows: 16. Cal. 295.

1. That congress understood the words public lands to embrace all lands which belonged to the government, and that any such land would pass by this act unless its operation was limited by an exception.

2. That an express exception excludes all others.

It sounds very elementary to say that the office of an exception is to save something from the operation of a statute which would otherwise have been included, and that the use of the exception *proves* that the writer used the general terms in their broadest sense. If the terms are susceptible of the sense which we give them, if there were no exception, their

meaning might be limited by judicial construction, but the act explains itself, the exception construes the words to which it relates. When the legislature by an exception or proviso give a construction to the words used in the body of the act, there certainly can nothing remain for the judiciary but to accept the construction given, and to construe the exception or proviso. To go beyond this would be to make the law by adding to or taking away from what the legislature had said. If the language of the exception is uncertain there is room for construction, but if there is no uncertainty in that can the courts go back to the language which it was introduced to explain and give to it a sense different from that in which the legislature have *said* they intended to use it ?

It seems to us almost like arguing a truism to say that in such a case the office of judicial construction is limited to the language of the exception.

That this was *public land* is not questioned, but it is claimed that it did not belong to that *class* of public lands which were subject to selection under this statute. If it did not, why not ? Counsel upon the other side have maintained that it was excepted by the *terms* of the grant. That the acts of the subordinate officers of the department of the government having charge of the public lands were within the meaning of the statute "a proclamation of the president." This argument was thought to find support in what was said by this court in *Wilcox vs. Jackson, 13 Pet., 497.* The particular passage of the opinion relied upon reads—

"Amongst other provisions in the act of 1830 all lands are exempted from pre-emption which are reserved from sale by order of the president. Now although the immediate agent in requiring this reservation was the secretary of war, yet we feel justified in *presuming* that it was done by the approbation and direction of the president. The president speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs including agencies, belong to the war department, hence we consider the act of the war department in requiring this reservation to be made, as being in legal contem-

plation the act of the president, and consequently that the reservation thus made was in legal effect a reservation by the act of the president within the terms of the act of congress."

The statute then before the court so far as material to any question now here reads—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year one thousand eight hundred and twenty-nine, shall be, and he is hereby, authorized to enter, with the register of the land office for the district in which such lands may lie, by legal subdivisions, any number of acres, not more than one hundred and sixty, or a quarter section, to include his improvement, upon paying to the United States the then minimum price of said land: *provided however*, That no entry or sale of any land shall be made, under the provisions of this act, which shall have been reserved for the use of the United States, or either of the several states, in which any of the public lands may be situated.

* * * * * * * * * * *

Sec. 4. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been or may be appointed, for that purpose, by the president's proclamation; nor shall any of the provisions of this act be available to any person or persons who shall fail to make the proof and payment required before the day appointed for the commencement of the sales of lands including the tract or tracts on which the right of pre-emption is claimed; nor shall the right of pre-emption, contemplated by this act, extend to any land which is reserved from sale, by act of congress, or by order of the president, or which may have been appropriated for any purpose whatever.

The exception contained in the present statute reads—"except such as is or may be reserved from sale by any law of congress or proclamation of the president of the United States." The distinction we think is manifest. Under that act the court held, and so said, and in doing so used the very terms of the act, that it was sufficient to exempt the lands from its operation, that they had been appropriated for any purpose whatsoever, and they held that an appropriation for the use of the war department was by authority of law; as to the

extent of the appropriation, that the order of the secretary of war to the commissioner of the general land office might be *presumed* to have been done by the approbation of the president.

In this case there is—

1. No appropriation of the land for any purpose.

2. There is no *presumption* one way or the other, what was done was done entirely by the subordinate officers of the land office, and appears in the record.

3. The language of the act then before the court was by *order* of the president, in this it is by proclamation.

While an order by one of the heads of the departments might perhaps very properly be regarded as the order of the president, who would think of calling such an order a proclamation of the president? In common acceptation there is a wide difference between the two, the one is addressed to a subordinate and is a mere direction which he is bound to obey, the other is addressed to the general public for its information, of the one the courts take judicial notice, the other must be proved as a matter of private concern. That congress recognized this difference we need not go beyond the act then before the court to learn, the section referred to uses both terms and obviously each in the sense that we have here indicated. If the terms, *by proclamation of the president*, include every mode of reservation except that by act of congress, why name at all the several other ways mentioned in the tenth section of the act? It is not questioned that lands may be reserved by that department for the use of the government without the sanction or knowledge of the president, but our argument is first, that a grant in general terms

of public lands includes any lands which belong to the public, and second, that an exception of a certain class of such lands by implication excludes the exception of any other class.

It was contended upon the argument in the court below that this court had decided, not that this particular tract but that the body of these lands above the Raccoon fork were reserved, and that these decisions were conclusive of this case, while upon our part it was not questioned that the court had so decided, but we contended that the force of the decisions depended upon the statutes then before the court, and that whether they were or were not applicable to this case depended upon the similarity of the statute now here to those then passed upon.

The decisions of this court with respect to these lands are:

1. That the original grant did not extend above the Raccoon fork. *The Dubuque & Pacific Railroad Co. vs. Litchfield, 23 How., 66.*

2. That the lands were reserved at the date of the passage of the Iowa railroad grant May 15, 1856, within the terms of the exception contained in that grant. *Wolcott vs. The De Moine N. & R. R. Co., 5 Wall., 681.*

3. That the lands were reserved from sale and pre-emption within the meaning of section ten of the act of 1841. *Welles vs. Reilly, not reported.*

The subsequent cases of *Baker vs. Williams, 17 Wall, 144,* and *The Iowa Homestead Co. vs. Valley R. R. Co., ib. 153,* and *Burrows vs. Crilley, not reported,* add nothing to these decisions.

The precise date at which, or how they were reserved, unless it was by the *general correspondence* of the officers having

extent of the appropriation, that the order of the secretary of war to the commissioner of the general land office might be *presumed* to have been done by the approbation of the president.

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The subsequent cases of *Baker vs. Williams, 17 Wall, 144,* and *The Iowa Homestead Co. vs. Valley R. R. Co., ib. 153,* and *Burrows vs. Crilley, not reported,* add nothing to these decisions.

The precise date at which, or how they were reserved, unless it was by the *general correspondence* of the officers having

charge of the land affairs of the government, we think is not determined by any of these cases. In Wolcott's case it is spoken of as being as early as 1849, and we make no question that the reservation such as it was, was anterior to the selection under which we claim, and no claim has ever been made upon the other side that it was by any law of congress or proclamation of the president. That the manner in which they were *treated* amounted to a reservation within the railroad act "by competent authority," we think might in the absence of authority be taken as a tolerably clear proposition, but as this court has held that there is other competent authority, than either a law of congress or a proclamation of the president, Wolcott's case settles nothing as to the construction of a statute containing only those terms; while it may almost be said, that the words "by any competent authority for any purpose whatsoever," would include everything which looked in the direction of a reservation. It would be difficult to read the two sections of the act of 1841 printed above, without feeling either that they express a difference in meaning, or show a most whimsical love of variety. The one says nothing of the purpose of the reservation but only of the authority by which it is made, and recognizes only two sources of authority by act of congress or by proclamation of the president of the United States. These were things which might easily be known, the particular act of congress, or the particular proclamation of the president, could be easily ascertained. So far the state, as grantee, was required to go at its peril, but ascertaining that the land had not been reserved in either of these ways, was it bound to send its messengers to Washington to wade through the correspondence for an indefinite period of time, of all the public officers who had ever written or received a letter in respect to the public lands, to see whether some one else had not in some other way taken the particular tract, or tracts, which it desired to select "out of the mass of the public domain?" When the language of

a statute is clear and unambiguous, is it competent for a court, by construction, to bring ambiguity into it? Had the selections, when reported by the state, been challenged by some subordinate in the general land office upon the ground that he had some time written to some one in Iowa, that in his opinion the lands selected were already appropriated, to which of the two classes named in the statute would the state have been likely to have assigned such opinion? It is just this which your Honors will find printed in the volume before you, all of which we concede to have been entirely proper under a statute which provided for a reservation in any way, and by any competent authority, but to ask a court to call things of this kind acts of congress and proclamations of the president of the United States, it seems to us would be a pretty large draft upon judicial good nature. We think this cannot be answered by saying as was then said that the president acts mainly through subordinates, for proclamations do not come in that way. If we contrast the language of the two sections that these are not simply two forms of saying the same thing is still more apparent. The one, after naming laws, treaties and proclamations of the president, proceeds to add a large number of classes by name, several of which are *reserves* as excluded from its operation, all of which is mere senseless tautology if the proclamation of the president *instar omnium* includes them all. If statutes are to be construed so that every clause shall have some meaning, how can the conclusion be avoided that it was the intention of congress to make a distinction between the exceptions contained in these two sections? The one takes out of its operation all lands reserved by the proclamation of the president, *and* all lands reserved for salines, *or for other purposes*, thus in terms excluding from pre-emption entry *all* reserved lands, without regard to the manner of the reservation or the authority by which it was made, provided it was by any, as of course it must be, competent authority.

But assume that we are in error as to this, and that counsel are right in supposing that the decisions made by this court, upon other statutes, are applicable to this, are the rights of these parties in any way affected by such reservation, and if so, how?

This court having decided that the grant of 1846, did not extend above the Raccoon fork, there was a time under the law, from the admission of the state up to 1849, when the state might have selected these lands, suppose that the department saw proper at that time to reserve them so that they would not be subject to pre-emption or pass under any subsequent grant containing an exception as to reserved lands, such reservation being made for the use of the state under the mistaken supposition that the land enured to it under another grant, the effect of the course of argument pursued by counsel in the court below would be to deprive the state of the right to take them under either, not under the first, because they were reserved; not under the second, because it did not embrace them. Who has a right to insist upon a reservation to defeat the title of a purchaser of such lands? It would seem to us that no one could do so but the party for whose benefit it was made. We think counsel would not contend that a trespasser could defeat the action of one holding the patent of the government by showing that the lands were reserved at the time that the patent was issued. But their line of reasoning goes beyond that, it would be sufficient for him to show that they were reserved for the use of the holder of the patent. Suppose that the joint resolution of 1861 had not been passed, would there then have been any doubt as to the respondent's title, or the title of the state under its selection, or who could then have questioned it? Or suppose the state had not sold the lands to the Navigation Company, could it have maintained an action against its grantee Mr. Wolsey, alleging its subsequently acquired title, and that its former claim of title was invalid because it had

mistakenly selected reserved lands? If the state could not do this, can a grantee whose rights are all subsequent to his?

To say that reserved lands are segregated from the public domain, or that reserved lands cannot properly be sold, and that patents issued for them are void, is without pertinency to these questions; a patent is never void where the sale is regular, and that the sale of these lands to the respondent was authorized by the state no question is made, so that we swing round the circle again to the question whether the state might avoid its sale upon the ground that its title was void because the lands were reserved at the time that it was acquired. If the exceptions in this section of the act of 1841, and the railroad grant were the same, it would still be no answer to this line of argument to say that this court has decided that the railroad company, by its grant from the state, acquired no title to the lands then in controversy. The state made no grant of specific lands to the railroad company, it granted only such lands as it received by the terms of the grant by congress, and there was no question before the court but that of the proper construction of that act. It was strictly whether lands then reserved were within the exception contained in that grant, and not whether the state might by a specific conveyance, having title to the lands under another grant, at a time when there were no conflicting rights, have conveyed to the railroad company, and whether such conveyance would have passed a good title. We have however more fully considered the question of an alleged violation of its trust, under another head of our argument.

In *Welles against Reilly* counsel for the pre-emptor did not seek to argue the question of reservation decided by this court upon the evidence before it in *Wolcott's* case, but maintained that the *evidence* in that case did not show such a reservation

as would take the lands out of the pre-emption laws, and upon that subject submitted the following propositions:

1. That it was not a reservation for any *purpose* of the United States within the meaning of the pre-emption laws.

2. That when a reservation is made by that department of the government which has jurisdiction over the public lands for the purpose of sale it is competent for that department at any time to allow pre-emption entries.

3. When land is reserved upon an erroneous construction of a grant which is subsequently determined not to embrace it, it still remains subject to pre-emption. *Argument of counsel for appellant in Welles against Reilly, page 28.*

Of course it is not questioned that the effect of the decision in that case was to hold against these propositions, and that this court then held that the lands were reserved within the meaning of the pre-emption law. But as that law excludes from pre-emption entry not only lands reserved "by law or proclamation of the president of the United States," but also those "reserved for other purposes," without specifying by whom or how, we suppose as said above in respect to the decision under the railroad grant, that it settles nothing as to a law which excepts only lands reserved in one or the other of these two ways. Under this law as under that, we suppose that the term *reserved* would imply some competent authority, and that *any* competent authority would be sufficient. Again we ask, after excepting lands reserved by law or proclamation of the president why add anything as to other reserved lands if the terms just used included the latter?

We submit that these decisions so far from settling this case, as was contended by counsel in the court below, do not

contain anything in any way affecting it, they were made with reference to language largely more comprehensive than that of the statute upon which the rights now here depend, language which embraced *any* mode of reservation. To say that a statute which speaks of a particular mode embraces *every* mode is to say that a part includes the whole, that one of several methods includes every conceivable method. If counsel can maintain that, then the cases relied upon do contain something which affects us, if they cannot we do not see that they do.

The court below was understood to have adopted this view of these cases, and indeed to have sanctioned our construction of the exception contained in the statute, and to have placed its decision adversely to us upon the meaning of the words *public land* as used in the body of the statute. Two recent cases in this court not yet—July 1876—reported were supposed to sustain this view.

Leavenworth, L. & G. R. R. Co. vs. The United States, Chicago Legal News, May 13, 1876.

The court said, "The act of congress of March 3, 1863, is the starting point in this controversy," and in the course of the opinion construed both the general words of description in the granting clause and the language of the proviso.

The act reads—

That there be and is hereby granted to the state of Kansas, * * * * * every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road and each of its branches. But in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States

for any purpose whatever, then it shall be the duty of the secretary of the interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land, in alternate sections, or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the rights of pre-emption or homestead settlements have attached as aforesaid.

The proviso reads—

And provided further, That any and all lands heretofore reserved to the United States, by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said road and branches through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the president of the United States.

As we understand this opinion so far as it relates to the body of the act it establishes--

1. That all grants of this description are to be strictly construed against the grantee, and that nothing passes but what is conveyed in clear and explicit language, that the terms employed are to be reasonably construed with reference to the situation of the parties and the nature of the grant.

2. That the words of the grant created a present interest which attached to the particular land upon the location of the road, and by relation had the same effect upon the selected parcels as if they had been specificially named in the act.

3. That as the perpetual right of occupancy was secured to the Osage indians by treaty they were for all practical purposes to be regarded as the owners of the land. That this right could only be extinguished by a voluntary cession of them by the indians to the government. That in the absence of words of unmistakable import it would not be presumed that congress intended to violate the covenant which the government had made with the indians or to deprive them of their right to deal with the general government upon terms of equality. That so long as this right remained the lands occupied by and secured to them by treaty in no sense belonged to the United States, and could not be rightfully disposed of by congress.

4. As the grant was intended to be of immediate practical benefit by aiding in the construction of the road as it progressed, it would not be presumed that congress intended to offer a premium for delay.

5. That in view of the treaty with the indians, and the actual occupancy by them of the lands at the time of the grant, and of the fact that their right of perpetual occupancy had not then been extinguished, the lands were "in no proper sense of the term public lands," and could not have rightfully been disposed of by congress, even if their intention to do so had been expressed in plain and unambiguous language. That the language used instead of expressing such an intention clearly excluded it.

If this is a fair statement of the substance of the opinion so far as it relates to the construction to be given to the act independent of the proviso, it does not seem to us that it is applicable to the construction of the statute now here, much less that it contains anything which is conclusive in respect to such construction. The distinctions which occur to us are :

1. The land then in controversy at the time of the grant did not belong to the government, it was in no sense public land. The land in controversy in this action was public land in the sense that it belonged to the government and *might* have been rightfully disposed of either at the date of the passage of the act, or when in respect to Iowa—upon its admission—it took effect; at neither of these dates, nor for some years afterwards was the land in any way reserved, while the opinion in that case proceeds partly upon the ground that a *subsequent* law in general terms will not be held to embrace reserved lands.

2. The court having held that the act created a grant *in præsenti* to have held it to embrace lands to which the indians then held the right of perpetual occupancy secured to them by treaty, would have been to hold that congress intended to place the government in a position where it could keep its faith with the state of Kansas and the railroad company beneficiary only by violating it with those who are uniformly spoken of as its wards. It *would* seem that before such an intention should be imputed to congress it ought to be very clearly expressed. In the present case whatever there was of any reservation and the reason for it, did not grow out of any act of the government or any distinctly expressed law of congress, nor were there any existing conflicting rights or claims which may have been supposed to be present to the minds of its members. Had the grant then been administered or immediately upon the coming in of the state, no question could have been made that it included the land in controversy. The whole controversy is of subsequent origin growing, not out of any conflict of duty which the government might be supposed to owe to the contesting parties, but out of the ambiguity of a subsequent grant, since settled against the claims of this plaintiff, or of the blunders of its administrative officers. It seems to us, and we submit that

where the facts are so entirely different, the cases cannot be governed by the same legal analogies. In the one decided, the construction contended for would have taken away from the occupants of the soil a possession which the government had pledged itself in the most solemn manner to protect, which most men would call robbery. In the other its effect would be, and that only, to say that lands clearly embraced by the grant first made might be selected under that grant, although before a selection by which it would attach to the particular parcels in controversy, they had been reserved for the purposes of another grant which was supposed to embrace them, but which was subsequently determined not to do so. If it is said, that the grant under which we claim being a mere donation is to be strictly construed, the argument applies to them with the same force that it does to us, each must find his title in the letter of the law, a construction which would relieve us, as we think, from the necessity for further argument as the question would then turn upon the force of the exception, where upon the argument already made it would be quite satisfactory to us to leave it.

3. Whatever may be the rule as between a construction which would make the government give what belonged to it, and one which would place it in the attitude of attempting to give what did not belong to it, although at the time of the controversy it had a subsequently acquired title, we submit that as between different beneficiaries claiming under the same grantee of the general government, the rules as to strict construction, that every grant must be taken most favorably to the government and the like, have nothing to do. The parties in this respect stand upon the same footing, and are governed by the ordinary rules applicable to the construction of private agreements, or at least they occupy the same plane whether it is called reasonable, liberal, or strict construction.

If as to us the terms *public land* would not embrace this land because it was reserved, as to them a letter written by a clerk in the general land office would be neither "a law of congress" nor "a proclamation of the president of the United States."

Without attempting further refinements upon what we suppose to be the distinctions between the case decided and the one now here, it seems to us not only that your honors placed the decision of that case as much upon the proviso by which the lands—it being settled that the grant was *in præsenti*—were clearly excepted from its operation, as upon the terms of the grant, but that the general words of description contained in the body of the act were interpreted by the light of the proviso. In this case we say, that what was meant by the terms *public land* as used in the granting clause of the act, if the terms in themselves are ambiguous, may be aided by the language of the exception, and if the terms are broad enough to have embraced lands reserved in *that* way but for the exception, they are broad enough to embrace lands reserved in any other way, there being as to them no such exception.

After an attempt which may look very much like telling your honors what you meant by your own decision, we feel a little reluctant to ask your indulgence while we briefly examine the other case upon which we understood the decision from which this appeal is brought in part to have been placed. *Newhall vs. Sawyer, Chicago Legal News, May 27, 1876.*

The lands in question were within the limits of an alleged Mexican grant existing at the time of the treaty by which California was ceded to the United States. By the terms of the treaty all private claims were fully secured. On the 3d of March, 1854, congress passed an act for the purpose of ascertaining and settling private land claims in the state of California. A commission was created to which all claims

might be presented, with the right of review by the supreme court of the United States. The act further provided that all claims which were finally rejected, or which were not presented within two years from the date of its passage should be "held and considered as part of the public domain of the United States." At the time of the passage of the Pacific railroad act, July 1, 1862, this claim was in course of judicial investigation, and was "finally rejected" by the decision of this court, February 13, 1865. The grant was in the present tense of "every alternate section *of public land not sold, reserved or otherwise disposed of by the United States.*"

We are quite as much at a loss to see how this case settles anything against us as with respect to the one just considered. Whether stipulated in the treaty or not, the United States certainly would have had no right of property in the lands embraced in well-founded Mexican claims, and until it should be in some way ascertained what claims were well-founded, it seems to us manifest that no *particular* portion of the territory acquired by the treaty could be regarded as public land. Further, the act providing for the commission recognizes by the clearest implication we think that some congressional action was necessary before any portion of the lands embraced in the ceded territory could be regarded as public *property*. The effect of this act as we understand it was first, to make all lands to which no *claim* should be presented within two years from the date of its passage public land; and second, to reserve all lands to which a claim should be presented within that time, until a final decision upon it. If it had reserved only all valid claims it would have meant nothing, for as to them they were beyond the reach of congress. I do not see how the statute would have been any plainer if it had said in terms that all lands to which any claim was presented should not be considered a part of the public domain until the final determination of the claim. This being the condition of things at the date of the passage of the railroad act, it seems

to us it might well be held either that the lands were not public land or that if public land, they were reserved within the meaning of that act, and that a question like that now here would not be within the reasoning of such a ruling. If the general definition of the terms "public lands" there given were broad enough to include lands situated as these were at the date of their selection, still that definition like all other general language used by a court would have to be taken with reference to the question which it was then passing upon. It seems too, to us, that what was said in the case last above referred to, about offering a premium for delay would be equally applicable to and quite as forcible in its effect, upon the construction of this grant. Instead of proceeding to the immediate construction of the road to stimulate which the donation was given, the company might have found it to their interest to wait, and speculate as to the chances of the confirmation or rejection of the grants along its line. Again, as it is now the settled rule of construction that these grants take effect at the date of their passage, we do not see how they can be held to embrace land which was not then of the kind described in the grant. Both upon general principles and by the act of 1851 it seems to us that lands situated as these Mexican and Spanish claims were, even if no act of congress were necessary to make the ceded territory *property* and as such subject to sale by the land officers, were not in any sense except that they were within the sovereignity of the United States, public lands. Legislative action was necessary to bring those lands into the public domain, while with respect to those now here legislative or executive action was necessary to take them out of it.

In concluding this branch of our argument we submit :

That the question whether the lands were properly selected by the state under the act under which we claim, depends

upon the exception which it contains, and that they were public lands subject to grant, and were granted unless excluded by its language :

That neither by the rule of strict construction applied to these grants as between the grantee and the government, nor by the ordinary rules for the construction of private agreements, which we think more properly applicable as between these parties, should those words be extended beyond their ordinary import :

That in their ordinary import the words "a proclamation of the president," would not include the acts of his subordinates done in the usual and customary routine of business, and without his knowledge or approbation. That the reservation relied upon by complainants having been made in that way and in no other was not of the kind specified in this act, and that as a consequence the lands were properly subject to selection.

It seems to us that to hold that a proper construction of the granting clause of these acts necessarily excludes all reserved lands, would work a complete revolution in the laws of statutory construction, and render all the provisos and exceptions which they contain so many useless forms of words. Or if this would not follow and if without this exception *all* reserved lands would be excluded, what can follow unless it is that the language of the exception limits the excluded lands to those which it describes ?

We shall be content with either conclusion.

II.

TRUST.

If the lands were reserved so as to exclude them from selection under the act of 1841, and were subsequently included in the grant for the improvement of the Des Moines river, as extended, can the complainant whose patent is subsequent to that of the respondent Wolsey, maintain an action to set the latter aside upon the ground that the state in making it, violated its trust by selling the land for a purpose different from that for which it was granted.

We suppose this to involve primarily two questions—

1. Whether this might be done by the government as the donor.

2. Whether if it would be a sufficient ground for setting aside the patent at the suit of the government and it does not see proper to institute proceedings for that purpose, a suit may be maintained by a private citizen.

And

3. In view of the circumstances of this case whether the condition of things at the time of the purchase was such as to charge the purchaser with the responsibility of one purchasing from a trustee known to be selling in violation of his trust.

Under either grant the state was not required to apply the *land* to any particular purpose, but was authorized *in terms*

to sell it and apply the proceeds in the one case to the improvement of the Des Moines river, in the other, by the act consenting to the diversion, to the support of common schools. The purchase by Mr. Wolsey was before the contract between the state and the De Moine Navigation Company. Date of purchase August 20, 1853, date of contract with the Company June 9, 1854. At that time both classes of lands were in market and being sold directly by the public officers. They were however in the hands of different officers, one class being in charge of the board of public works, and the other in care of the superintendent of public instruction and the school fund commissioners. As sales were made from time to time patents were issued in either case from the state land office signed by the governor, in the one case upon the requisition of the commissioner of the Des Moines river improvement, and in the other upon that of the superintendent of public instruction. At the time Mr. Wolsey purchased, the land had been selected and regularly certified in the usual course as a part of that grant. It had been ordered into market, and no claim is made that the sale was not in all respects regular. Up to that time no question had been raised as to the validity of the selection, although there had been prior to that time a conflict of opinion among the public officers as to the extent of the Des Moines river grant. The secretary approving the grant, Mr. Stuart, held as his predecessor Mr. Ewing had done, that the grant did not extend above the Raccoon fork. This selection was approved March 5, 1851, and it was not until October following that he decided in view of the great conflict of opinion, and as the question "must ultimately be determined by the judicial tribunals," to approve selections above that point, his own opinion remaining unchanged. By his letter of October 26—printed in the record—he says, "the selections will be approved without prejudice to the rights if any there be of other parties," and all lists subsequently approved saved such rights. Notwith-

standing the approval of lists above the Raccoon fork subsequent to the approval of this land under the act of 1841, up to the time of the purchase by Mr. Wolsey no claim had been made or intimation given that the lists already certified under that act were invalid or that they would be revoked. It was not until the next year so far as appears by the evidence that that question was raised.

The cases relied upon by counsel in support of their views, in the court below, were those in which the courts have passed in the ordinary exercise of their jurisdiction upon the rights of adverse claimants, under the laws of the United States, where it was claimed not that the land had been sold by the executive officers for a purpose not authoized by law, but that they had sold either where they had no right to sell at all, or that one had acquired the legal title in fraud of the rights of another. To say that the courts have jurisdiction in such cases, and that in its exercise they may inquire into the powers of the executive officers of the government, and whether in the particular case they have properly disposed of the land in controversy, or whether in doing so they have been imposed upon and have conveyed the title to one when they should have conveyed to another, is certainly a very different thing from saying that any court, state or federal, can sit in judgment upon the acts of the state itself, and inquire whether it has or has not abused its trust. We do not suppose that any court may either directly or indirectly exercise such a power at the suit of a private citizen, or that it will in passing upon his claims inquire whether the state has either abused its trust, or mistakenly conveyed in violation of it. As to whether they have this power at the suit of the party making the grant, it is not necessary to inquire, as the state is not seeking to avoid the sale, but is here asking its affirmance, and that it never authorized a conveyance of these specific lands to the complainant's grantor is conceded. What is this suit then in effect but an action against

the state to control or to avoid its execution of the alleged trust? As we view it, for the purposes of this question it might be conceded, that in selecting these lands under the act of 1841, and in subsequently conveying them to the respondent as a part of that grant, the state acted mistakenly, yet having subsequently acquired a perfect title, and having at all times since ratified the conveyance so made, any process of reasoning which fails to prove that the courts may control the execution of the trust, must fail in any way to support the complainant's claim. Whenever the exercise of such a power has been directly invoked the courts have answered that the trust is of political and not of judicial cognizance, from which we suppose it to follow that the title of its grantees would be in no way affected by the conditions contained in the grant, or by a supposed violation of its trust.

We submit—

1. That if the land had in fact been embraced in the Des Moines river grant instead of being reserved on account of a conflict of opinion in respect to it, the trust reposed in the state would not have been of judicial cognizance.

2. The state being authorized to sell, the title of the purchaser would not be affected by its misappropriation of the purchase money.

3. If under any circumstances a purchaser from a trustee would be affected by notice that he designed to misappropriate the trust funds, and the title rendered void by reason of such

notice, under the circumstances of this case it would not have that effect.

4. If the purchaser had notice that the lands had been reserved on account of another grant, he was also informed of the change of opinion, and of their release from such reservation.

5. That under no circumstances could a title made by a state to lands granted to it by the general government though in unquestionable violation of its trust, be set aside except at the suit of the government. As bearing upon this question see—

Cooper vs. Roberts, 18 How., 173.
Dunklin Co. vs. D. Co. Co., 23 Mo., 449.
Supervisors of Whiteside Co. vs. States Attorney, etc., 31 Ill., 68.
Barrett vs. Brooks, 21 Iowa, 144.
Keltner vs. Story Co., 28 ib., 35.

Mr. Litchfield, of counsel upon the other side, and whose printed argument upon the hearing of this cause in the circuit court is now before me, seems formerly to have been of this opinion. In his argument in Wolcott's case, and again in his reply to the argument of the railroad companies as intervenors he says :

"The intervenors have nothing to say as to the effect of the deeds and patents of the state conveying the lands to us. Were they effectual to pass the title? We insist that they were—and that they transferred to us all the title then possessed, or subsequently acquired by the state; and, that, in this view, it is not important to determine when, or how the title first vested in the State. The defendants were purchasers, in good faith, and for value—and having the patents of the state, they took a good title free and discharged from any trust created by the act of 15th May, 1856.

18 Howard 173, Cooper vs. Roberts.
4 Wash. C. C. Rep., 38.
4 Wheaton, 421.
23 Missouri (2 Jones) Rep., 449 Dunklin County vs. District Court.
14 Ben Monroe (Ken.) Rep., 433, Sims vs. Lively.
1 Wallace, 333, Baker vs. Gee.

If the state took title to the lands, under the act of 15th May, 1856, that act did not impose any limitation upon the power of the state to dispose of the lands *after title should be acquired.*

The act, as we contend, would give title to the state, only from time to time, as sections of twenty miles of road should be constructed; and then only of the lands lying on each side of 'the roads' so constructed; but, if we were to concede, that in some manner the state had acquired a title under the act of 15th May, 1856, then we claim that that title would be absolute and that the state could lawfully convey the lands by patent and give a perfect title; and that that act does not create any trust which attaches to the lands, and follows them into the hands of purchasers from the state.

That act grants the land to the state 'for the purpose of aiding in the construction of railroads' between certain specified points. This was the object to which the proceeds of the grant should be applied; and, in good faith, the state may be bound to see that the proceeds are thus applied. But purchasers from the state are not bound to see that the money which they pay into the state treasury is disbursed therefrom in any particular manner, or for any specified purpose. This is beyond their power. It is sufficient for them that they find the state holding a title, and that the act of congress, by virtue of which such title is acquired, does not contain any limitation upon the power of the state to dispose of the lands after the title is once legally acquired.

These views are sustained by the authorities above cited. In the case of *Cooper vs. Roberts, 18 Howard, 173,* the grant was of lands to the state of Michigan, 'for the use of schools.' The court said:

'The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, *over which the power of the state is plenary and exclusive.* In the present instance the grant is to the state directly, *without limitation of its power*, though there is a sacred obligation imposed on its public faith. We think it was competent for Michigan to sell the school reservations without the consent of congress.' Again: '*Michigan has not complained of the sale*, and retains, so far as the case shows, the price paid for it. Under these circumstances *we must regard the patent as conclusive of the fact of a valid and regular sale.*'

In the case at bar, Iowa 'does not complain of the sale' to us—and 'retains the price' paid by us for the lands; and all parties claiming interests in these

lands claim under or through the state of Iowa; but we alone hold patents from the state; and these patents should be held 'conclusive of the fact of a valid and regular sale.'

In the case cited from *23 Missouri Rep.*, the court held that the trust created by a grant of land by congress to Missouri, was a trust which was *personal* to the state—but did not attach to the lands; and that a purchaser from the state held the land by a good title, discharged from the trust.

In the case cited from *1 Wallace, 333*, Missouri had disposed of some of the granted lands for a different purpose from that named in the act of congress; but it was held that if the railroad company had ever had any right to object, it was waived by filing its exceptance of the state grant—and the court said '*The United States are not complaining, and no other party has a right to complain.*'

Suppl. Arg., pages 12–14.

In his opening argument in that case—pages 40–42—he says:

"The defendants being purchasers from the state, in good faith and for value, and having patents from the state took a good legal title, free and discharged from any trust created by the act of 15th May, 1856.

The act of 15th May, 1856, prescribes that the lands granted shall be applied to the purposes therein specified '*and no other*,' and it is argued that, *therefore*, the attempt to transfer them to the Des Moines Company was illegal.

We reply it has already been seen, that as the act made the grant 'for the purpose of aiding in the construction of railroads,' without prescribing any special mode of extending the aid, such a conveyance was strictly in accordance with the act.

It has also been seen that congress, by the act of 12th July, 1862, 'consented' to the applications which were made by Iowa of these lands. *And finally,*

If the United States does not object to the disposition which the state has made of the lands, *no other party can.*

This point was ruled by the United States court in the case of *Baker vs. Gee, 1 Wallace, 333.*

That was a grant to Missouri for railroad purposes, passed 10th June, 1862, *in terms exactly like the Iowa grant by act 15th May, 1856.*

The state disposed of some of the lands differently from the directions contained in the acts making the grant: and that fact was set up to defeat the title thus made by the state. But the court said: '*If the United States do not object, no other party can.*'

The state cannot object its own want of power to convey the lands, which by acts of legislation and by patents it has transferred to the defendants; neither can the railroad companies object; for at the time of the grant to them

by the state, on 14th July, 1856, the state, claiming ownership of these lands, had sold them to the defendants, who were then in possession as owners; and these facts were of public notoriety in the state; and neither the state nor the railroad companies then supposed that such grant, by act of 14th July, 1856, had any reference to the lands now in controversy; and, moreover, by the 16th section of the state law it is provided that the companies accepting the grants of land, under said act, 'shall in no event have any claim or recourse whatever upon the state of Iowa for a *misapplication of said grant*,' &c. As between the state and the Railroad Company, therefore, they could not raise this objection. In short, in the language of this court, '*If the United States do not object, no other party can.*'

We conclude, therefore, that the state has conveyed to the defendants *all the title it has ever had* to such lands: that is a *title in fee*, whether it derived such title under the act of 8th August, 1846, or under the act of 15th May, 1856, or under the joint resolution of 2d March, 1861, or under the act of 12th July, 1862."

We do not quote so largely from the arguments then submitted by them, for the purpose of showing the inconsistency of the views then maintained by them and those which they now urge, but adopt what was then said by them as pertinent to the questions now here and ask that the rule which they then sought to have applied to others be applied to themselves, and we hope they will consider it no ground for complaint that we borrow their law.

The state not only retains the money paid to it by Mr. Wolsey, but has done all in its power to secure a confirmation of the title which it then made, and it is now here upon its own motion as a party to this action—under a special law passed for that purpose—asking that his title be established.

III.

CANCELLATION.

It is claimed by complainant's counsel that the lists certified to the state under the act of 1841 were upon a change in the ruling as to the extent of the Des Moines river grant, cancelled by the *commissioner of the general land office*, that it was competent for him to do so, and that the effect of such cancellation was to divest any claim of title, which Mr. Wolsey might have acquired by his purchase.

Upon this, we claim:

1. That there was in fact no cancellation.

2. That it was not competent for the commissioner or the secretary to cancel lists certified and approved by a previous secretary.

3. That if either had power to do so, such cancellation would not affect previously acquired rights.

There is no controversy as to the facts, they are as follows:

1. The lands were selected by the state under the act of 1841, June 20, 1850, approved March 5, 1851, filed with register March 20.

2. The tract in question was purchased by Mr. Wolsey and fully paid for August 20, 1853. The patent did not issue until December 23, 1854.

3. Mr. Stuart decided to approve lists above the Raccoon fork October 29, 1851. In doing so however he expressly stated that any lists which might be approved would be without prejudice to the rights of other parties, and no mention was made at any time as to the condition of these lands, or notice given that any action would be taken in respect to them, nor was any action in fact taken during his term of office, nor until December 30, 1853, when without previous notice to the state so far as appears from the evidence, they were approved by secretary McClelland as falling to the state under the Des Moines river grant, the certificate stating that they had been erroneously approved as coming to it under the act of 1841. On the 6th of January following the commissioner of the general land office notified the superintendent of public instruction that this list had been approved and that the state was entitled to select an equal quantity elsewhere. On the next day he wrote to the register of the state land office informing him of the action that had been taken, and requesting him to cancel the approval of the lists that had been certified under the act of 1841.

It is submitted—

1. That these acts do not constitute a cancellation of the previous lists any more than issuing a second patent would operate as a cancellation of the first.

2. As to the authority of the commissioner to cancel a list certified and approved by the predecessor of his superior after it had been accepted by the grantee, we are willing to accept the law as stated by counsel for complainant in their printed argument in the circuit court, that "the rule applicable to patents applies to such lists."

They say :

"The authority of the commissioner to cancel the certificate seems to be recognized and sustained by the decisions of the United States Courts. It is held

1. That the commissioner issuing a patent performs a ministerial duty and if it be fraudulently or negligently issued to an improper person, the commissioner is authorized to correct the error.

20 Howards Rep., 29, Doswell vs. De La Lanza.

If the issuing the patent is a ministerial act so is the certificate and approval. The effect of both if the act done is done by authority is to pass the title. And if the commissioner has the power to cancel a patent issued from his office, which on its face imports a transfer of the title, on the same grounds and for the same reasons he may revoke and recall a certificate whose object and purpose are to pass the title. The principle that controls the one act must sanction the other.

2. 'The commissioner of the general land office exercises a general superintendence over the subordinate officers of his department, and is clothed 'with liberal powers of control to be exercised for the purposes of justice and 'to prevent the consequences of inadvertence, irregularity, mistake and fraud 'in the important and extensive operations of that officer for the disposal of 'the public domain.'

19 Howard's Rep., 252, Bell vs. Hearne.

3. 'It has been the uniform practice of the commissioner of the general 'land office to cancel patents issued for lost lands. And the law recognizes 'the power.'

3 McLean's Repts., 319, Nelson vs. Moon.

These decisions seem to sustain and confirm the position that the commissioner in cancelling his certificate to the state, acted within the scope of the powers conferred upon him by law. And if he did then his revocation of the certificate took from the state its only muniment of title to the 12,813.51 acres, and the defendant stands in court without a shadow of evidence to maintain his claim of ownership to the tract in controversy."

Opening Arg., page 34.

We suppose that he would have no such power in either case, that in the language of this court in the case of the Leavenworth Railroad Co. above cited, "The cancellation of a patent is a judicial act, and the United States can through a court if thereto entitled obtain relief." It is not claimed

that the *secretary* did anything by way of cancelling the list unless the approval of the subsequent list of itself had that effect, and that the commissioner said that it *had* been done we think amounts to nothing.

We have found no authorities directly upon the question of a cancellation or attempted revocation of lists, certified either according to the practice prior to the act of 1854—Lester's L. L. 1, p. 236—or under that act, but we agree with counsel that decisions as to the power to cancel a patent, are properly applicable to the same question as to such lists. The decisions referred to by them are all of the former class. As we understand the rule a patent after it has been delivered to the party for whom it was designed, cannot be revoked or cancelled by any executive authority, unless voluntarily surrendered, and we think that the cases cited by them in the court below and which will doubtless be relied upon here, do not, as they suppose, hold otherwise, while decisions to the contrary are numerous. In *Doswell vs. De La Lanza*—cited by them—*20 How., 29*, the patents had been inadvertently issued by the commissioner of the land office of the state of Texas to parties who were not only not entitled to them, but who neither had nor made any pretence of a right to the premises, nor did the defendants claim any title derived from the parties to whom the cancelled patents had been erroneously issued. The action was ejectment, the defendants trespassers, and the offer of the former patents was with a view to defeat the action by showing, not even an outstanding title in a third party, but that the plaintiff's patents were void because the lands had been previously patented. The court held that the first patents did not divest the title of the state, and that it was competent for the commissioner to correct the mistake by cancelling them.

In *U. S. vs. Stone, 2 Wall., 535*, this court says: "A patent is the highest evidence of title and is conclusive as against the government, and all claiming under junior patents or

titles until it is set aside or annulled by some judicial tribunal." That a third party cannot raise a question as to the validity of a patent see *Field vs. Seabury, et al., 19 How., 323.* "It is a question between the sovereignty, making the grant and its grantee." In *Le Roy vs. Clayton, 2 Sawyer, 497*, the court use this language: "If the title vested under the patent the commissioner of the general land office could not of his own motion divest it by cancelling the patent, or the record of the patent without the knowledge or consent of those interested," citing *30 Cal., 65 and 37, ib. 437.*

Taking the rule as counsel gave it to us upon the argument in the court below, we think the law is clearly against them. The quotation above is from Mr. Ellwood's argument upon the hearing in that court. He was formerly of a different opinion. In an argument now on file in the office of the secretary of the interior in respect to these lands, upon page sixty-two he says:

> "Nor could the then acting commissioner of the land office annul the act of his predecessor—for the reason that 'one officer of the land office is not competent to cancel or annul the act of his predecessor.' That is a judicial act which 'requires the judgment of the court.'
>
> 2 Wallace Reports, 525, United States vs. Stone.
>
> 15 Peter's Reports, 400, Bank of Metropolis vs. U. S.
>
> Letter of Attorney General Cushing to Secretary of Interior of date of 29th May, 1856, in regard to Des Moines river lands."

Nor has his associate Mr. Litchfield, whose printed argument was also read in the court below, been heretofore of this opinion, circumstances to which we should not refer were it not that all of the counsel have pertinaciously insisted that all of these questions are already settled, and that *we* are trying to reopen the old debate while they are occupying the positions which they have always maintained, and in which this court has sustained them. We read these extracts to show that the positions in which the court sustained them are precisely those which we now hold, and that they are the

parties who are here asking this court to reconsider those decisions, while we are content that the law which was then given to them be now applied to us. In his argument in *Wolcott's* case, page sixteen, he says:

"The act of the secretary of the treasury, on 2d March, 1849, in deciding that the Des Moines river grant 'extended from its source to its mouth' was a *judicial* act. It was necessary for him to interpret the act for his own guidance, and that of his subordinates in the land department.

The act of the land office in deciding what lands were embraced in the secretary's decision, and its consequent order to withhold them from sale were also *judicial acts*, and could only be set aside by judicial proceedings.

It will be noted that the act of 1846 made *a valid grant;* the only question was as to its extent. The grant included the lands *below* Raccoon fork; the doubt was whether it embraced those *above*. The entire grant was *one thing;* its extent must necessarily be determined before it could be administered by the land office. The secretary and the commissioner were not acting without authority, as they would have been if there had been no grant. A grant was made by the act, and it was their peculiar province to judge of its extent. Having decided that the grant embraced the lands in question, it was their duty, and they had authority to withdraw said lands from market and *reserve* them. These were *judicial* acts, and although they may have proceeded upon a mistaken view of the law, yet they were, until judicially reversed, just as effectual for all purposes as if they had proceeded upon a correct view of the law.

The grant made by the act was one thing whether it affected the lands both above and below Raccoon fork, or only those below. The secretary's decision was a decision relating to, construing, and defining the entire grant; and so was his order to the commissioner sent to him for 'his *government*.' This made it the commissioner's duty to reserve all the lands included in the grant, as thus construed by the secretary. His order withdrawing the lands above the Raccoon fork just as effectually 'reserved' them as though they had really been embraced in the grant.

The United States court say:

One officer of the land office cannot cancel or annul the act of his predecessor. *That is a judicial act and requires the judgment of a court.*

Stone vs. United States, 2 Wallace, 525–545.

These *acts* were therefore to be regarded as *judgments* binding upon the government, and upon all the world, *until reversed by the decision in 23 Howard, 66.*"

At page eleven of his argument in *Litchfield vs. Register, &c., 9 Wall., 575*, Mr. Litchfield says :

"The certificates issued to the state by the land office, and approved by the secretary, are declared by the act of congress of 3d August, 1854, to have the force of patents.

The effect of a patent (or of the certified lists, which are substitutes for patents) is well stated by this court in *3 Wallace, 478, Beard vs. Federy.* 'In the first place (said the court at page 491) it is a deed conveying the interest of the United States in the land: In the second place * * * it is record evidence of the action of the government upon the title of the claimant. * * *As against the Government, this record, so long as it remains uncancelled is conclusive:* and it is equally conclusive against parties claiming under the government by title subsequent.'

The certified lists thus issued by the land department to the state were formal official acts, which were intended to convey the title, and which were understood by the executive officers, as well as by the state and its grantees, to have that effect.

Thereafter the state dealt with the lands as its own, and sold and conveyed them to numerous grantees, and no one doubted the validity of the title, until this court, in *23 Howard, 66*, decided that the grant did not extend above the Raccoon fork.

But that decision did not determine anything else, and especially it did not cancel, nor purport to cancel, these certified lists. They remained outstanding in possession of the state, as evidence of its rights and of the rights of its grantees, and with such effect as the law gives to them. Although they were not effectual to pass the title, still they constituted the 'record of the action of the government upon the title,' and were 'conclusive against the government' until they should be cancelled. The effect of this record was to disable the government from transferring the lands to other parties until after the certified lists—which were acts of transfer—had been duly cancelled.

How could they be cancelled? We submit that it could be done only in one way, and that is, by filing a bill in a court of equity, to have them *judicially* cancelled and set aside. No executive officer of the government could by his own authority cancel those lists, any more than he could cancel patents, nor could he disregard them while they remain uncancelled.

In a case which came before this court, in *2 Wallace, 525, United States vs. Stone*, a former secretary of the interior attempted to cancel an official act of his predecessor, but this court said 'The secretary of the interior transcended his authority' in attempting so to do; and the court added, '*One officer of the department cannot annul the act of his predecessor; that is a judicial act, and requires the judgment of a court.*'

And so in this case, while these certified lists remain outstanding and uncancelled, they are conclusive against the government and its officers, and prevent them from dealing with the lands as a part of the public domain; and they can be cancelled *only* by a judicial proceeding instituted directly for that purpose.

2 Wallace, 525, United States vs. Stone.
4 Wallace, 236, Hughes vs. United States.

Again we hope that counsel will not complain if we borrow their law.

He continued to be of this opinion upon the argument of the case of *Welles vs. Reilly*, so often and so confidently cited against us. In his printed argument now among the files of this court at page forty-three he says:

"How can they be cancelled?

It is insisted, on the other side, that if the decision of this court in *23 How., 66*, did not remove the reservation, yet that the land officers who made the reservation could remove it; and that the act of allowing a pre-emption, and issuing a patent, is of itself a removal of the prior reservation as to the particular land involved in this suit.

But we submit:

The acts by which the executive officers reserved these lands and appropriated them to satisfy the grant of 8th August, 1846, could not be cancelled by the same officers, or their successors; but as private rights had intervened, this could only be done by *judicial* sanction upon a direct proceeding instituted for that purpose.

The approval of these lands under the grant of 8th August, 1846, and the certified copies of the approved lists, issued to the state were formal official acts—which were understood and intended to separate all these lands from the public domain, and appropriate them to Iowa under that grant. The act of congress conferred upon the secretary the *power of approving* the selections which the state should make, and under this authority these approved lists were made. The list is entitled 'a list showing the lands * * * falling to the state of Iowa under the act of 8th August, 1846,' &c. (Record, p. 41,) and in signing it the secretary says: 'The *selections* embraced in the within list are hereby approved,' &c. (Record, p. 45.) At the time and for many years afterwards, this was understood by all the executive officers to have taken these lands out of the public lands and to have fully transferred the title to the state of Iowa. The question now is not whether such lists are properly approved; nor whether they could have the legal effect which the department intended; but the question is, whether these formal acts, which

the department intended as acts of transfer, did not have the same effect as if the department had issued patents instead of approved lists and certificates? We insist that these approved lists and certificates were, in legal effect, in all respects like patents; if issued in cases and for lands included in real grants, then, like patents, they conveyed the title; if on the other hand, they were issued for lands which had not been granted, then, like patents issued under the same circumstances, they might be declared void.

But all these attempted transfers of title, wether by patent or by certificate, are good against the government and all junior titles until *judicially* cancelled and set aside; and no executive officer can cancel either of them of his own power, and without the order of a court.

This is evidently so understood by the land officers. Mr. McClelland, a former secretary of the interior, (page 554 of Lester's Land Laws and Decisions,) in speaking of one of these approved lists, says, he *'can no more of his own motion revoke or cancel any part of an approved list* after it has passed from him *than a patent for land after its delivery.'*

In *3 Wallace, 478, Beard vs. Federy*, the court, in speaking of the effect of a patent, (and these approved lists stand upon the same footing as patents,) says: 'In the first place it is a deed, &c.—In the second place it is record evidence of the action of the government upon the title of the claimant; * * * *as against the government, this record, so long as it remains uncancelled, is conclusive;* and it is equally conclusive against parties claiming under the government by title subsequent.'

In *7 Wheaton, 212, Hoofnagle vs. Anderson*, this court said, 'If the patent has been issued irregularly, the government may provide means for repealing it; but *no individual has a right to annul it, to consider the land as still vacant, and to appropriate it to himself.*'

In *2 Wallace, 525, United States vs. Stone*, this court had occasion to decide upon a case where a former secretary of the interior had attempted to cancel an official act of his predecessor and to annul a patent issued by him; but this court said, 'The secretary of the interior transcended his authority when he attempted to overrule the acts of his predecessors.' In the same case the court stated the effect of patent as follows: 'A patent is conclusive against the government, and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. * * Patents are sometimes issued unadvisedly, or by mistake, or where the officer has no authority in law to grant them. * * In such cases courts of law will pronounce them void. The patent is but evidence of a grant, and the officer who issues it acts ministerially, and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But *one officer of the land office is not competent to cancel or annul the acts of his predecessors. That is a judicial act and requires the judgment of a court.*'

As the secretary of the interior could not, without judicial sanction, set aside a patent for a single section of land even in that case where it was void as the court afterwards pronounced, it can hardly be seriously contended that he had power without notice to revoke or cancel the approved lists upon which Iowa and its grantees have relied for nearly twenty years, as their evidence of title for hundreds of thousands of acres.

These approved lists are official acts, upon which the rights of parties depend, like patents, and can only be cancelled by a judicial proceeding instituted directly for that purpose.

2 Wallace, 525, United States vs. Stone.
4 do, 236 Hughes vs. United States.

Until this is done they remain outstanding in the hands of the state and its grantees, and with such effect as the law gives them."

If this court has sustained them as they have said again and again, "*in every position*" which they have heretofore taken in the arguments concerning these lands who takes most by its rulings upon this position? It looks to us as if we were now occupying the positions which they have heretofore taken in *all* of the cases which they say have settled the law and which they claim we are now seeking to disturb.

When their list was certified ours was outstanding, and if it is true as they then maintained that it could be cancelled only by judicial action, it is outstanding yet. We hope that they will be content to accept the law in which this court "has uniformly sustained" them.

3. If it were competent for the commissioner or the secretary to cancel the lists—though we maintain that the latter never attempted to do so, and that the only pretense of any cancellation is by a subordinate of what had been done by the predecessor of his superior—he could do so only as to the lands then remaining unsold by the grantee. Mr. Wolsey's purchase as already stated, was before the change of ruling or any attempt at cancellation.

IV.

ESTOPPEL.

If the certified lists under the act of 1841 were void because the lands were not public lands within the meaning of that act, or because they were reserved within the meaning of the exception, the lists under the act of 1846 were void because the lands were not within the limits of the grant; which would of course leave the state without title prior to the joint resolution of congress of March 2, 1861.

If it acquired title by that resolution under the statutes of Iowa, Rev. § 2210, for whose benefit did it enure?

If the principles ordinarily acted upon by courts of equity have anything to do in settling this question, we submit that we need not go in search of arguments to support our positions beyond the maxims—

That where equities are equal the legal title will prevail:

That between equal equities that which is prior in time is superior in law:

And—

That between titles by different grants every reasonable intendment will be in favor of that which is prior in time:

The titles stand in this way :

Complainant's.	Respondents'.
1. Des Moines R. Grant, Aug. 8, 1846.	1. Internal Improvement Act, Sept. 4, 1841.
2. Approved under this grant, Dec. 30, 1853.	2. Selected under this grant, June 20, 1850; Approved March 5, 1851.
3. Contract D. M. N. Co. with the State, June 9, 1854.	3. Purchased by Wolsey and fully paid for in cash, Aug. 20, 1853.
4. Deed by Governor to D. M. Co. May 3, 1858.	4. Patent by State to Wolsey, Dec. 23, 1854.

Upon this subject, as well as upon some of the preceding, we may borrow light from the other side. In his argument in Wolcott's case Mr. Litchfield contended even if the state took title to the lands under the railroad grant that it enured both by the common law and under the Iowa statute for the benefit of the De Moine Navigation Company and its grantees *as the holders of its patents.* At page thirty-eight of his argument he says :

"Whatever title to the lands in question has ever been vested in the state of Iowa, *under any and all of the grants made* to it by congress, has been transferred to, and vested in the De Moine Navigation & Railroad Company, by the deeds and patents of the state.

These patents purported to convey a title *'in fee simple.'*

The patents were dated in May and June, 1858. If the state then had a fee simple title, it vested at once in the De Moine Company. If the state did not have a fee simple title at the date of the patent, but obtained one under the subsequent acts of congress, that title at once enured to the De Moine Company. (*Record, pp. 24, 25.*)

15 Howard, 538, Delauriere vs. Emison.

This rule of the common law is made a provision of the statutes of Iowa.

(*Code of Iowa, Revision, of 1860, Sec. 2210.*)

On the argument of the case in *23 Howard, p. 66,* attorney general Black, who intervened in behalf of the United States, contended that the rights of the parties in that suit *'depended upon their deeds from the state;'* and he argued that the oldest patent conveyed all the title which the state had, or should thereafter acquire. He said:

'When a party sells or conveys lands, he transfers all the title he has * * * * I need make no argument to prove that the same facts which would estop a private individual or a corporation, will estop a sovereign state and its privies in a judicial proceeding; or that the proprietary rights of a state are governed by the same rules of common honesty that regulate those of other parties. Nor will it be said, that in this case the state of Iowa was acting in two seperate capacities, and that, therefore, she had a right to sell the same land twice, and get a double consideration for it. It is true that she took the two grants, with an injunction which implied a legal obligation to use the proceeds for two different purposes. *But they were both public uses, in which the state as a state was interested, and nobody else was properly interested in either.*'

* * * 'If the plaintiff had a conveyance, *his right*, whatever it is, *will depend on the acts and deeds of the state in making the several conveyances to himself and the other party.* The general rule is, that where one who has no title conveys land to another, a title subsequently acquired by the grantor, enures to the benefit of the grantee. This would give title to the plaintiff, in dependant of the state's claim under the Des Moines grant.' * * * '*What I say is that the case depends upon their deeds from the state and not upon the construction of either grant from the United States to Iowa.*'

The grant by the act of 15th May, 1856, was to 'Iowa for the purpose of aiding in the construction of railrords."

'The act did not prescribe the *manner* in which the aid should be granted. It was clearly competent for the state, as fast as it got title to the lands to sell them and apply the proceeds in 'aiding the construction' of the prescribed road: or it might donate lands directly to the companies which should build the road. Either mode of disposition would satisfy the law of congress.

In the act granting the swamp lands to the several states, *approved 28th September*, 1850, the grant was 'to enable the states to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein.' And the act contaiued this provision: 'Provided, however, that the proceeds of said lands *whether from sale, or by direct appropriation in kind*, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid,' thus clearly contemplating that either mode of disposition was proper. * * * * * *

The legal presumption is that the state applied the sums received, or such part of it as was just '*in aiding the construction*' of the prescribed roads. This was, therefore, a proper disposition of the lands, even under the grant of 15th May, 1856."

The state received from Mr. Wolsey the sum paid for the land, and to borrow Mr. Litchfield's language as just quoted, "the legal presumption is" it applied it for the purposes of

the Des Moines river grant, "this was therefore a proper disposition of the lands even under that grant." Again we ask if this court has settled "every position heretofore taken by them in their favor," who is the gainer by its decision upon this proposition? According to what he then claimed, as the holder of the first patent the after acquired title would enure for our benefit, and it would be no concern of ours what the state did with the money. In Wolcott's case as between the claims of the Railroad Company and the De Moine Navigation Company, this court says "although the state possessed no title at the time of the conveyance to the company, yet having an after acquired title by the act of congress, it would enure to the benefit of the grantees. * * * This in accordance with the laws of the state of Iowa." The same is repeated in substance in the case of the *Iowa Homestead vs. Valley Railroad.* The law is undoubtedly settled as between the titles then before this court, but we think that the principles upon which those cases rest, correctly applied to the facts of this case, lead to a conclusion directly the reverse of that claimed by counsel. Quoting from the opinion in the Homestead case they say the title vested in the state "for the grantees under the river grant." Undoubtedly as to the lands and between the parties then before the court. We have already pointed out what we suppose to be a distinction between a grant of specific lands by proper description, and a grant in the language of the act of the legislature conferring the lands granted to the state upon the several railroad companies. The language of that act is; "So much of the said lands, rights, powers and privileges as are or may be granted and conferred in pursuance of the act of congress aforesaid * * * are hereby disposed of, granted and conferred." It needs no suggestion, that the act of congress making the grant is as essentially a part of this act as if copied into it. If the act of congress did not grant the lands to the state, the state did not grant them to the railroad companies,

so that the controversy turned upon whether they were or were not embraced in the act of congress, and that depended whether they were or were not reserved within the meaning of the proviso contained in it. If it were settled that they did not come to the state under that grant, the claims of the railroad company were disposed of, leaving the Navigation company as the only party holding title under the state. There was no question to be decided between different claimants, each holding the conveyance of the state, and we suppose that for that reason those cases settle nothing applicable to the present, except that our statute in respect to subsequently acquired titles applies to conveyances made by the state. If the question is not as counsel suppose settled, but is open for discussion, it seems to us that as between these parties it cannot be a difficult one to answer. That the state claimed the lands under the Des Moines river grant does not advance their argument, for it also claimed them under the grant, under which we claim. If the resolution under which they claim had made a new and unconditional grant, it probably would not be claimed that the title which the state received would not enure to the benefit of its grantees in the order of their priority. The argument for complainant has nothing upon which to rest, but the idea of a *confirmation* of the claims of the state under that particular grant, and that, therefore, all other claimants are excluded. If it were conceded that such was the intention of congress, and that the claims of no other parties were thought of, still we do not think that this conclusion would necessarily follow. We have argued and as we think upon sufficient authority, even where a trust is distinctly expressed in the grant that it does not follow the property. Of course such a line of argument nullifies the trust, and for all legal purposes makes the grant as if unconditional, and that is what we claim partly upon the authority of what we have shown to have been heretofore claimed by counsel upon the other side, in which they say this

court has sustained them, and partly because we suppose it necessarily to result from the sovereign character of the trustee. If the law is not as we claim upon that subject, we still submit that while the resolution by its terms, may give a little more prominence to the claims of the grantees of the state under the river grant, or if it might be shown by the history of its passage that they were more thought of, yet in neither is there anything to exclude other "*bona fide* purchasers under the state," nor anything to indicate that it was the intention of congress to limit the power of the state to use the lands as it saw proper in settling the claims of its grantees; or if by reason of the statute the title passed through the state without vesting in it, to point out any particular class of persons as the special objects of congressional bounty to the exclusion of all others.

V.

ADJUSTMENT.

If the title did not *ipso facto* vest in the grantees of the state, upon the passage of the joint resolution of 1861, without further identification of the particular tracts intended to be granted, than was indicated by the words of the resolution "the tracts * * * now held by *bona fide* purchasers under the state," and if it were necessary, in order to vest a complete legal title in any particular lands, that there should be an adjustment of the grant and a certification of the lands ascertained to fall within it, the state was the only party competent to make such adjustment, and in doing so it might properly determine for the benefit of which of its grantees it would accept the lands granted.

The line of argument heretofore pursued upon the other side we think confounds the ordinary acts of executive officers in the exercise of their real or supposed general powers, with the acts of the government itself through those officers by legislative direction specifically given to do the particular act.

Up to 1866 this and several other grants to the state remained unadjusted, and although the state had prior to that time either appropriated or sold the lands supposed to be embraced in them as it is a rule of the department that in adjusting such grants it will recognize no one but the grantee named in the act, the legislature at its session of that year passed an act appointing a commissioner to represent the state in procuring an adjustment of them. This act in terms

instructs the commissioner to secure a confirmation of these lands as school lands. A settlement was made by which this was done, the lands were re-certified as a part of that grant and the settlement was subsequently confirmed both by the state legislature and by congress.

If this settlement did not bind the grantees of the state it did not bind anybody. Agents and attorneys had been employed at Washington for years prior to the passage of this act at the expense of the state, and their power to bind its grantees by their acts in the matter had never, so far as appears in the evidence in this case, or so far as we are in any way informed, been questioned by anybody. It seems to have been the understanding not only of those representing the state and of the officers of the general government, but of the grantees of the state, that all sales and grants by the state prior to the final adjustment of the grant by the general government were subject to adjustment between the officers of the state and those of the general government, and by them only. In the court below counsel seemed to find somewhere among the principles of the law of *estoppel* something that they thought would in effect nullify this settlement. It was not made very apparent just how this was to be worked out, we thought that their claims might better have been put distinctly upon the ground of vested rights, which if not more solid, would at least have been more intelligible. It is true the latter idea was in some way mixed up in the argument, but it was put rather in the form that the state was estopped from questioning their rights, than that they in fact had any vested rights. We do not suppose that so long as these grants remained open, there could be any such thing as vested rights in a sense that implies the exclusion of future legislative action, or which would give the purchaser a right to enter upon and hold any particular tract of land to which the state might acquire title by some other grant, simply because it was one of the tracts in-

cluded in his purchase. We suppose that any purchase made while the grant continued subject to the action of the officers of the land department would be upon the implied condition that the state should finally acquire title to the land under that grant. If in any part of our argument we have maintained different views it is partly from a feeling that there is a question in respect to it, and partly through respect for what has been said upon the other side in the numerous cases which they say have settled all these matters.

If the principles of the law of estoppel, upon which they now take their principal stand, are applicable to public grants, it must be upon the ground that as to such acts the state is governed by the ordinary rules applicable to private transactions. If it is governed by these rules the conclusion at which we arrive is the reverse of that maintained by counsel in the court below. To maintain their position they cited among others the case of *Nieto vs. Carpenter*, 7 *Cal.*, 527, which if its law be accepted we think directly favorable to us, as ours is the first patent and that this case is an authority that as against it neither the state nor its privies can be heard to say that at the time of issuing it, either that it did so in violation of some duty that it owed to a third party, or that it did not hold the title that it assumed to convey. We take no issue with counsel as to the application of these principles to the state and its privies, but the results which we suppose to follow from their application to this case are that they would estop the state and all claiming under it by conveyance subsequent to Mr. Wolsey's, from asserting such subsequently acquired title, as the facts by which they seek to estop the state, and which they claim would defeat his title, are all subsequent to his purchase. As we look at it, the effect of these subsequent acts does not depend at all upon any of the principles of the law of estoppels but upon the legal force of the acts themselves, and the right to do them. To apply these ideas to the act appointing the

commissioner to settle with the general government, we do not claim because that act recognizes these lands as a part of the school grant, and directs him to secure them as such, that the state is *estopped* from claiming them under some other grant, but our claim is that this settlement was one of the steps by which the title in fact vested in the state under that grant. Whether after the complete legal title had vested under the grant, the rights of the claimants under the state would or would not immediately attach, we suppose that the grant did not take effect until its acceptance by the state. Its language is, "all the title which the United States still retains * * is relinquished to *the state of Iowa*." Suppose the state had not seen proper to accept the grant, would it have had the effect, without such acceptance, to vest a title to any particular tract of land in any private party who could show, either in the courts or before the department, that he was a *bona fide* purchaser under the state?

We understand, first, that although a grant in the terms of this act takes effect in *præsenti*, that it does not for the obvious reason that it cannot, attach to any particular lands coming within its description until they are designated by the proper executive officers of the government; and second, that in making the necessary adjustment the general government will neither deal with nor recognize any party but the one named in the act as its grantee. This question was not involved in the cases under the railroad grant relied upon by counsel. Those cases did not involve the rights of different claimants, both of whom held the patents of the state, and this court no further entered upon the consideration of the effect of the settlement between the state and the general government of the several grants which it embraced, than to show that as between one who held the patent of the state and one who had no rights whatever, that the settlement would not have the effect to defeat the operation of the patent, and to vest the title in one so situated, although it

was made under the mistaken idea that he was the holder of some title derived from the state. As to those parties the settlement was founded upon a mistake, while as to the lands involved in this action, the act of the legislature appointing a commissioner to make the settlement, instructs him to secure their restoration as a part of the five hundred thousand acre grant, but as to the railroad grant he is not authorized to do anything with respect to it, unless such authority is implied in the power given as to the grants named. We think that it does not follow because this court has decided that a settlement mistakenly entered into does not have the effect to vest a title where none existed before, that a settlem nt of conflicting claims, where the title of either of the grantees of the state would be good were the other out of the way, expressly authorized and made with a full understanding of all the facts, and subsequently ratified by the legislative power of each of the parties, is void. Neither of the grantees of the state could do anything towards completing the title claimed, both held its patent, what lands came to the state under the resolution, as having been sold by it to *bona fide* purchasers, had not been determined by executive action or in any other way. The title of the state and its grantees under the act of 1841 had been brought into doubt by the lands having been subsequently certified under the grant of 1846. Nothing can be plainer than the propriety of providing, as the legislature undertook to do, for an authoritative and final settlement of the disputed claims. Of course if either party had a complete legal title to the premises in question, it could not be confiscated, but if it was only an expectancy, something contracted for but not vested, if there were two trusts to be administered, and steps had been taken under each, either there is nothing in the argument of counsel that a grant made in violation of a trust may be avoided by the original grantor, or it was competent for the donor and the trustee to do just what was done in this

case, to settle all questions that might arise as to whether the trusts had been faithfully executed, as to who were *bona fide* purchasers, as to what lands had been disposed of by the general government for which the state was entitled to indemnity, and how the lands certified in lieu of those sold should be held, and for whose benefit they should enure. All the while remembering and recognizing that vested rights cannot be interfered with. The complainant claims no legal right independent of this resolution. The argument is that the grant made by it was for the benefit, not of *all bona fide* purchasers under the state, but only of such as had purchased *under* the grantof 1846. That by the joint resolution of the legislature of March 22, 1858, and its acceptance by the Company, the state became bound to convey to the latter all of the lands that had been certified under that grant, except such as had been sold "under"—as they construe it—for the purposes of that grant. That although Mr. Wolsey was a purchaser, a *bona fide* purchaser from the state, he is not within the spirit of this grant, although he is within its letter. Here again they seek by construction to bring into the act what congress did not see proper to say. If there was a doubt as to whether the act did intend what it did not say, and did not intend what it did say, how could a question of that kind be better settled than by an adjustment of the grant between the party making and the party receiving it? The state thought the matter of sufficient importance to appoint a special commissioner for that purpose, and to require that before any settlement made by him should be binding it should be submitted to and approved by its census board; and after this both governments thought it not only of sufficient importance, but that its conditions were such that it ought to be approved, which was accordingly done after the lands had been listed and certified as school lands, by the state March 31, 1866, by congress, March 3, 1871. We think, as applied to the facts of this case, the decisions referred to contain nothing at variance

with these views, for the plain reason that there was nothing then before the court which called for any examination as to how the law should be applied to facts such as are now here.

In his concluding argument in the court below, at page fifteen, Mr. Litchfield in speaking of this settlement quoted from the opinion of this court in the Iowa Homestead case as follows :

"Whatever may have caused the adjustment, it is quite spparent that something more was needed than the action of the land commissioner, fortified as it was by the approval of the secretary of the interior, to pass a valid title to the state and its grantees."

To which he added by way of comment :

"Subsequently congress and the state of Iowa ratified the adjustment: By which very excellent bargain the state acquired large tracts of land to which it had not previously any title. But there was no attempt, either in the adjustment or in the ratification by the contracting parties, in our absence aud without our consent, to trade off, or to barter away, our rights and vested titles; and if there had been any such attempt even between sovereign states, it would have been as futile and as void in the eye of the law, and in the presence of this court, as would be any other unauthorized traffic between any two of the humblest citizens in the land."

I do not know exactly what he means by saying "they did not attempt to trade off our rights." They did attempt to settle the *status* of the particular piece of land now here in controversy. It was confirmed as school land, re-certified as such, and other land certified to, and accepted by the state in lieu of it.

It may not be very satisfactory to your honors that we argue this case by quoting so largely from the arguments heretofore made by counsel upon the other side, but such a course of argument ought to be most satisfactory to them, as they both begin and end by saying that "all of these questions have been settled by the *reiterated* decisions of this court." In their concluding argument in the court below, they say

that "it involves no legal principle that has not been already settled by these decisions." It cannot be quite time lost it seems to us to see what questions they supposed these previous cases to involve, when arguing them before this court, and upon which side of those questions they then took their stand. In Wolcott's case, as we understand Mr. Litchfield's argument, he maintained that the De Moine Company took title to the land by its deeds, without reference to the act under which, or to the purpose for which, the state had acquired it, that the trust did not follow the land. He distinctly maintained that although the state might have acquired title to the land only by the act of 1856, and for the purpose of aiding in the construction of the railroads indicated in that act, it would nevertheless enure for the benefit of the De Moine Navigation Company and its grantees as the holders of its first deeds. He further argued that the grant remained subject to the control of congress until "the particular lands were set apart and specially designated by the certificate and approval of the land office," which is a little stronger than the position that we are now taking, as we express no opinion as to whether this may or may not be so without the consent of the grantee. If this court has by its "reiterated decisions" heretofore sustained them in all their positions and if this was one of them it would seem that those decisions ought to support the same positions when taken by us, and if they are to be regarded as approving the line of argument then pursued by counsel that they would warrant us in pursuing upon the same questions the same line of argument. The portion of the argument in Wolcott's case which we suppose to sustain what we are now saying, as to the positions heretofore taken by them upon this question, and which we adopt as pertinent to our views, is as follows:

"The act of May 15, 1856, did not confer upon the state of Iowa any title to, or any beneficial interest in, any lands; it simply conferred a mere naked

power or trust for the benefit of the grantor, which was liable to be revoked, and which it was competent for congress to *revoke at any time prior to its execution by the actual construction of the road;* and which congress *did revoke* by the joint resolution of 2d March, 1861, and the act of 12th July, 1862.

1 *Black, Rep.*, 358, 378, *Rice vs. Railroad Company.*

In this case, the supreme court construed a railroad grant to Minnesota, which, in all essential particulars, was exactly like the grant to Iowa by the act of 15th May, 1856, and the court held that the act *did not convey any title* or *any beneficial interest, in presenti*, to the state. But it was a mere *naked trust* for the benefit of the grantor, *and liable to be revoked at any time before it was executed.*

The court said: 'We think it clear that the territory acquired nothing under this act of congress but a mere naked trust, or power to dispose of the lands in the manner therein specified, and to apply the same to the use and purpose therein described. Suppose it to be so, it is not controverted that *congress could at any time repeal the act creating the trust, if not executed, and withdraw the power.* [P. 381.]

In other words, congress could at any time revoke this grant as to all the lands granted, except those lying on each side of the *finished* portion of the road.

The joint resolution of 2d March, 1861, and the act of congress of 12th July, 1861, *which expressly granted the lands in controversy to* the state of Iowa for *the grantees under the act 8th August*, 1846, was a distinct legal *revocation* of any grant made by the act of 15th May, 1856, so far as it affected these lands.

Congress has uniformly exercised the right of control over, and of disposing of any lands which have been granted by similar acts of donation to states, at any time prior *to the actual execution of the trust* and the consequent vesting of title in the state.

1. By 'act in relation to the Fox and Wisconsin River Reservation in the state of Wisconsin' approved 2d March, 1840, in which congress legalized all land entries which had been made upon the odd numbered sections of said reservation *subsequent to the passage of an act* of 8th August, 1846, granting them to the state of Wisconsin for the improvement of the Fox and Wisconsin rivers.

Lester's Land Laws, page 149.

2. By 'act for the relief of purchasers and locators of swamp and overflowed lands,' approved 2d March, 1855, in which congress directed patents to be issued to the purchasers and locators of such land who had entered them at any time (after the grant of swamp lands to the states by act of 28th September, 1850,) and prior to the issue of patents to the states under said grant, provision was made to obtain releases from the states of their title to any lands actually sold by them: but requiring the patents to issue absolutely to

the purchasers for whose relief the act was passed, if the states should not within ninety days file a list of their sales in the land office.

Lester's Land Laws, page 248.

By an act approved 3d March, 1857, this act 'was continued in force and *extended to all entries and locations of lands claimed as swamp lands made since its passage.*'

Lester's Land Laws, page 285.

3. 'A resolution relating to sections 16 and 36 in the territories of Minnesota, Kansas and Nebraska,' approved 3d March, 1857, in which congress assumed to dispose of sections 16 and 36, which had previously been reserved by law for the purpose of being applied to the support of schools in said territories or the states to be created therefrom.

Lester's Land Laws, page 285.

4. The act of 26th February, 1860, entitled 'an act to authorize settlers upon 16th and 36th sections, who settled before the survey of the public lands to pre-empt their settlements.'

This act allows settlers to pre-empt their claims, and if said lands '*or either of them shall have been or shall be reserved or pledged for the use of schools or colleges in the state or territory in which the lands lie*' then other lands are to be substituted for them.

Lester's Land Laws, pages 306, 307.

5. Act approved 2d June, 1864, *amending* the aforesaid act of 15th of May, 1856, granting lands to Iowa for railroad purposes, in which congress assumes to control the disposition of the lands granted by the original act by authorizing all of the roads to change their routes—by changing *the mode* in which lands should be certified to the state or the roads—by confirming the rights of settlers under color of titles derived from the United States, or from Iowa, *adverse to the grant made by said railroad acts of 15th May, 1856, and 2d June, 1864,*—section 5; and by directing the lands to be conveyed to the railroads to be taken from the lands *belonging to the United States at the date of the passage of said amendatory act of 2d June, 1864,*—sections 2, 3, 4: Thus limiting the grant to lands *owned* by the United States in 1864, and clearly negativing the idea that the title to any particular lands had been vested in the state by the act of 15th May, 1856: By expressly requiring proof of the completion of 20 miles of road each year after 1864 before any lands should be certified—sec. 8: and by requiring the roads 'to offer for sale within three years from the completion of any section of its road, *its lands lying opposite such completed sections.* Section 9.

The foregoing instances show that congress has always exercised a *control* over the disposition of lands which it has granted to the states in *trust, up to the moment when the trusts have been executed,* whereby the title to the lands became perfect in the states

Congress, by said act of 2d June, 1864, has assumed the power to *dispose* of and *control* the lands granted to Iowa in trust by the act of 15th May, 1856' which is inconsistent with the idea of any legal title to the lands having then vested in the state, and said act defines what lands congress understands the state will ultimately get a title to; because it requires the state to sell 'its lands *lying opposite* such *completed sections*' of road. It is evident that congress did not suppose the state would ever get any lands under that act, except lands lying '*opposite the completed road.*' " *pp. 31–34.*

All of which we are willing to accept as a part of our argument and we think it applies with much greater force to the case which we are now arguing than to the one then under discussion, as in that congress alone had acted, and that too not by *saying* that they designed the lands to be appropriated to the particular purpose claimed by Mr. Litchfield, nor indeed, by saying anything about the specific lands then in controversy. That conclusion is worked out by *argument* from the supposed effect of the joint resolution of 1861 and the act of 1862 upon the railroad grant of 1856, the effect of which counsel argues was to give *them* the lands although they were embraced in the railroad grant, and he argues that it was competent for congress by this subsequent legislation, the railroad grant remaining unadjusted, to give them this direction. We do not stand upon grounds which involve either so much argument or so many problems of difficulty.

We have—

1. The distinct declaration of the state in the act appointing a commissioner to make the adjustment, that it does not intend to relinquish its claims to these lands as a part of the 500,000 acre grant, and its express instructions to the commissioner to secure their confirmation as a part of that grant.

2. A settlement by which they were secured as such.

3. A confirmation of this settlement by both the state and general government.

In the case then before the court these things were all sought to be made out by argument, built upon the idea that although congress did not intend any such thing, the necessary result of what they had done in view of certain general rules which counsel assumed to be law, would produce this effect. In this case nothing is left to inference as to the intention either of congress or the state legislature. That both designed that this land should be held by the state and its grantees as a part of the grant under which we claim is not only distinctly asserted but to secure that was the principal purpose of the acts referred to. The case presents simply a question of power, counsel then thought that the power of congress over the subject was not exhausted until the final adjustment of the grant. However that may be, we think until a complete title has vested to the particular tracts in question that by the joint act of grantor and grantee a new direction may be given to the grant, and that unless counsel were mistaken in their views as to when a complete title does vest, in the cases which they say are decisive of this, there can be no question but that this land at the time of this settlement was subject to the action which was then taken. They now, however, talk of vested rights and scout their old ideas. We do not mean to be at all behind them in maintaining the sacredness of such rights, but we do not understand that anything less than a present fixed right of possession in a third party would defeat the power of congress and its grantee by their joint action from giving a new direction to the grant. Much less, in our judgment, would a settlement of doubtful questions be declared invalid

by the courts. We suppose that to have been the condition of these grants at the time that this settlement was made. If they have vested rights, when as to any particular parcel of land did they attach? If the state had any right to these lands prior to the joint resolution of 1861, it was by its selection under the act by which we claim. If it had no such right did that resolution *proprio vigore* vest a complete present title to every tract within its limits which had previously been erroneously certified and that was then held by *bona fide* purchasers from the state, which by operation either of the rules of the common law or of our statute immediately enured to the benefit of a particular *class* of such purchasers to the exclusion of others? How could it be determined who were *bona fide* purchasers or who belonged to one class and who to another? Unless there was something in the law to determine this it did not *proprio vigore* vest the title either in the state to the particular tracts held by such persons, or in the persons themselves as its grantees. If this was to be *ascertained* that means adjustment, and implies executive duty. We think and submit that there is no escaping this, except upon the claim that the resolution itself vested an immediate title to each particular tract in the holder of the deed of the state to that tract as a part of the Des Moines river grant, which we think implies importing into the act a great deal of history and numerous facts which congress did not see proper to put there.

VI.

PLAINTIFF'S TITLE.

By the true construction of the joint resolution authorizing the settlement with the Company, the lands in question were excepted from those authorized to be conveyed.

While we rely mainly upon the purchase by Mr. Wolsey and its legal sufficiency to vest a perfect title in him whether the land came to the state by the one grant or the other, we feel at liberty to show that the complainant has no title whether the sale to him was valid or not—and in respect to this we maintain that he has no title to the premises, for the reason that they were not included in the contract with the Company nor authorized by the resolution of settlement to be conveyed to it by the governor.

By the contract with the De Moine Navigation Company the state agreed to sell and convey "all of the lands donated to the state of Iowa for the improvement of the Des Moines river, by act of congress of August 8, 1846, which the said party of the second part had not sold up to the 23rd of Dec., 1853."

By the letter of the contract it does not include these lands, and it is only sought to be extended by argument.

No claim is made that in fact the sale to Mr. Wolsey had not been made, and the lands paid for by him prior to this time, but it is sought to be avoided by the argument, that the state in making it had violated its trust. Suppose it had, and suppose too, that in doing so the sale made by it, contrary to

the views heretofore maintained by counsel upon the other side, was absolutely void, the *fact* would still remain, the agreement with him, his payment for the land, and that the money received from him had gone into the state treasury to help educate its young, would still be so many facts in reference to which all subsequent contracts of the state concerning the same subject matter by every rule of construction would have to be interpreted. If we add to this, that public grants are to be construed most favorably to the government, how exceedingly attenuated is the logic which would not only extend this contract beyond the plain import of its language, but which would place the state in the attitude of pleading its prior breach of faith with the general government as justifying a breach of faith with its own citizens. In the interpretation of this contract so far as it disposes of the public domain, it is the intention of the state that is to be sought after. What kind of a rule of construction would that be by which the courts of a state would say that it was the intention of the state to repudiate its contracts after they had been fully executed by the other side, because upon fuller consideration a doubt had arisen as to whether the property disposed of came to it for one purpose or for another?

But even this would not support the line of argument pursued by complainant's counsel, who sought not only by construction to bring into the contract what is not there, but to take out of it what it plainly expresses. In other words, they sought by construction to make room for fraud, where those who executed the contract on behalf of the state, were careful to protect themselves and the state against any such imputation.

All which was supposed to be answered by three words contained in the joint resolution of the legislature of March 22, 1858. The language there used is: "Saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the state of Iowa, by its officers and agents, prior to

the 23rd day of December, 1853, *under said grant.*" To say nothing of joint resolutions which are usually passed not only with less formality but with less consideration than statutes, we suppose it to be allowable in any case to refer to the history of the passage of an act and the condition of things which gave rise to it. But beyond this we understand acts of this kind, whether in the form of statutes or resolutions, to stand upon the footing of contracts, and to be governed by the ordinary rules applicable to their construction.

If this is so, and contracts are to be read by the light of surrounding circumstances, what kind of a figure would the state cut in agreeing to sell lands for which it had been paid and had issued its patent years before?

Individual members of the legislature, in swinging round the circle, may not escape every temptation, but the history of legislation no where shows the perpetration of a deliberate down-right swindle by a majority of a legislative body upon their own constituents, in the interest of a party which they were trying to shake off. Is it likely that the members representing the districts within which these lands are situated, would have supported this resolution with the knowledge that such a construction was to be put upon it? Who had stronger claims upon either their sense of public justice or private right, or those which they would have been more likely to recognize than those who had purchased and paid for what the state had assumed that it had a right to sell? This style of argument is pretty general, but is it an unfair test of the correctness of a line of argument which excludes every circumstance attending the transaction, by the strict letter of the last of a series of instruments relating to it? If it is a rule of construction that every clause in a contract must have some meaning, it is also a rule that a party will never be held by general words to have contemplated an engagement which he could not lawfully perform, and that the language used should always, if possible, be applied to its subject

in such a way as to uphold all of its stipulations, consistently with known rights in the subject matter. So far as the lands within the limits of this grant had been sold "under said grant," if by that is meant for the purpose named in the grant, as was claimed by counsel, the exception was wholly useless, for as to such lands there certainly could be no question; to take them out of the operation of the agreement required no reservation. The construction claimed places the state in the position of *offering* more by way of settlement of a contract which the other party had wholly failed to perform, than it had agreed to give upon full performance. But however this may be, and without further pursuing the argument as to what was intended by the state, or understood by the Company, we submit that so far as Mr. Wolsey was concerned who purchased before the contract with the Company, and received his patent years before the passage of this resolution, whether it was so intended or not, neither the one nor the other nor both together could do anything to prejudice his rights.

We accept what was said by them at page fifty-four of their brief as applicable to this question: "It is a familiar rule that if the thing granted is not in the grantor no right passes to the grantee, and when the state has no title to the thing granted the grant is void."

The state had no title either at the date of the contract or of complainant's patent, unless it could treat its prior conveyance as a nullity.

CONCLUSION.

In incorporating so much of the former arguments of counsel upon the other side into our own, we have had in view the double purpose of showing first, what their positions have

heretofore been in respect to questions common to those cases and to this, and second, to adopt as a part of our own argument what they have prepared and we find ready for use. We have not supposed that of itself it was a matter of any importance what their positions were in those cases, or by what line of argument they supported them, but as they constantly cite them against us with the claim that they are conclusive upon everything involved in this, we have thought it would not be entirely without interest and that it might possibly save your honors some labor to present in their own language just what they have claimed and how they have sought to maintain their claims. We do not think that any of those cases involved, or that this court passed upon any of the questions now here except that of reservation, and as to that question we think the difference between the statutes then and now here renders the decisions inapplicable to it, as now presented. Of course we do not forget that it is claimed upon the other side nor do we question that in Wolcott's case the court held that the subsequent grant enured to the benefit of the De Moine Navigation Company and its grantees, and we have pointed out why we suppose that such a holding in that case, would not be conclusive upon the same question as presented in this. In this case we suppose that, if the question of reservation is held in our favor that it will be unnecessary to go further, but if it should be held against us that it will then become necessary to pass upon the other questions which we have discussed. Some of the counsel in this case were of counsel in all of the preceding ones, and they argued in those cases, as we suppose we have shown, most of the questions here discussed, although as we understand the decisions the court did not pass upon them. We think that they supported the positions then held by them and now by us, with a much better show of law and logic, than they have heretofore been able to make in the course of the proceedings in this case, in opposition to them. It has

seemed to us that upon the following questions they have not so far, been able to answer their own arguments :

1. As to the effect of a sale by the state in violation of the trust upon which the grant was made. Both in Litchfield's case and in Wolcott's they maintained that the trust did not follow the land, and that if it did, if the United States did not complain, no one else could.

2. In Wolcott's case they maintained that under the Iowa statute, a subsequently acquired title would enure to the benefit of the taker of the first patent, without reference to the purpose for which the grant was made, or to the grant under which the state assumed to sell to him.

3. As to the effect of a cancellation or revocation of certified lists. They held both in *Litchfield vs. Reg. & R.* and *Welles vs. Reilly*, and argued at great length as they had before done before the department that this was a judicial act, and that any attempted revocation by any executive officer of a list once made and delivered was a nullity.

4. Upon the question of vested rights they maintained in Wolcott's case, that until the particular tracts of land granted were ascertained by the proper executive officers, no such rights existed, and that up to that time the whole matter remained subject to congressional action.

We do not agree with them that this court passed upon all these questions. If we supposed that they would make that claim in this court, or that they would concede as much, we should be quite willing to take them at their word, and with all of the priorities in our favor, and with the rule established that the trust did not follow the land, or that if the govern-

ment did not complain nobody else could, we should ask your honors to give us the benefit of their former labor. In respect to every one of these questions taking the line of argument then pursued by them and adapting it to the facts of this case, our position is much stronger than that occupied by the De Moine Navigation Company and its grantees in any of those cases. Their claims were made out only by arguments and inferences, some of which were not very far removed from guessing, while as to ours the intention of the state has been at all times distinctly expressed, and constantly maintained.

In conclusion it is submitted that the questions here discussed legitimately arise out of the facts of the case, and though not formally passed upon by the court below, that the decree necessarily implies a ruling upon them adverse to the views here maintained. We think that the cases heretofore decided by this court did not involve a decision upon any of them, as they arise out of the construction of statutes upon which the rights of the parties then before the court did not depend, and the relation of these parties to each other and to the state as their common grantor. We submit that all of these questions are new in the history of this litigation, and feel that it is not improper to ask for them a consideration proportioned rather to the magnitude of the interests involved, and the great length of time that these controversies have been pending in the courts and before the land officers, than to the manner in which they are presented or to the reasoning by which we have endeavored to support our views in respect to them.

GALUSHA PARSONS,
and JOHN A. HULL,
For Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 104.

WILLIAM T. WOLSEY AND THE STATE OF IOWA, APPELLANTS,

vs.

RICHARD B. CHAPMAN, APPELLEE.

BRIEF FOR APPELLANTS.

GALUSHA PARSONS,
Of Counsel.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1879.

In the Supreme Court of the United States

October Term, 1879.

WILLIAM T. WOLSEY AND THE STATE OF IOWA, APPELLANTS,

v.

RICHARD B. CHAPMAN, APPELLEE.

No. 104.

BRIEF FOR APPELLANTS.

September 4, 1841: Congress passed an act entitled "An act to appropriate the proceeds of the public lands and to grant pre-emption rights."

Les. L. L., vol. 1, *p.* 59, *Rec., p.* 97.

Sec. 8 *of Act of* 1841, *Arg., p.* 13.

In Iowa these lands were appropriated to the support of common schools, and they are there spoken of as "school-lands," which was approved by the act of Congress admitting the State into the Union.

August 8, 1846: Congress passed an act entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines river in said Territory."

Record, p. 21.

Id., p. 119.

The complainant claims the land under the latter act; Wolsey, as the grantee of the State, under the former.

For a fuller statement of the case see argument, pages one and two.

The dates essential to a proper understanding of the titles under these acts stand in this way:

Complainants.	Respondents.
1. Des Moines R. Grant, Aug. 8, 1846.	1. Internal Improvement act, Sept. 4, 1841.
2. Approved under this grant, Dec. 30, 1853.	2. Selected under this grant, June 20, 1850; approved Feb. 20, 1851; received at local office, March 5.
3. Contract D. M. N. Co. with the State, June 9, 1854.	3. Purchased by Wolsey, and fully paid for in cash, Aug. 20, 1853.
4. Deed by Governor to D. M. Co., May 3, 1858.	4. Patent by State to Wolsey, Dec. 21, 1854.

See Rec., pp. 53–4.

This suit was originally brought in the State court for the *cancellation of the patent* above referred to, upon the claim that the lands, at the time of their selection by the state as school lands, were reserved from sale, which reservation was sought to be established not by any particular order or proclamation, but *by the general correspondence between the land officers at Washington and the local officers in Iowa.* Upon that subject, upon the part of the respondents, it was claimed that this case was distinguishable from those previously decided by this court as to the manner in which a reservation could be made, and the effect of this correspondence as to a reservation under the railroad grant to Iowa of May 15, 1856.

See Arg., p. 13, &c.
Rec., pp. 4–21.

The decree was in favor of complainant.

An abstract of the pleadings and evidence is contained in appellants' argument, pages three to eight.

We suppose the questions of law presented to be—

1. Whether a patent may be cancelled by the decree of any court, State or Federal, at the suit of a private citizen.
2. Whether these lands were reserved within the meaning of the eighth section of the act of 1841.
3. Whether a state can be judicially controlled in the execution of a public trust.
4. Whether the D. M. N. Co. by the terms of its settlement with the State became entitled to this particular tract of land.
5. Whether when two grants are made and there is a controversy as to which of them embraces the land in question, an adjustment between the State and Federal officers, approved by the state legislature and by congress, is conclusive upon the grantees of the state.

See Arg., pp. 11–12.
Rec., p. 95, &c.

Of these questions the second, third, and fifth are applicable to all of the so-called Des Moines River school lands.

We maintain—

1. That a patent cannot be so cancelled.
   Field v. *Seabury*, 19 *How.*, 323.
   United States v. *Stone*, 2 *Wall.*, 525.
   Moore v. *Robbins*, 6 *Otto*, 530.
   Arg., p. 43, &c.

2. That these lands were not reserved by any *act of Congress or proclamation of the President of the United States.* We endeavor to distinguish this case from *Wolcott* v. *D. M. N. Co.*, and others, involving the question of reservation as between the Des Moines river grant and the Iowa railroad grant.
   See Arg., p. 13, &c.

16 Cal. 295, 502

We also endeavor to distinguish it from *L. L. & G. R.R. Co.* v. *United States*, 2 *Otto*, 733, *and New hall* v. *Sanger*, *Id.*, 761.

Arg., *p.* 25, &c.

3. Upon the subject of the alleged diversion of the trust we say, "if the United States do not complain, nobody else can."

Arg., *p.* 35.
Cooper v. *Roberts*, 18 *How.*, 173.
Baker v. *Gee*, 1 *Wall.*, 337.
Dunklin Co. v. *D. C. Co.*, 23 *Mo.*, 449.
Supervisors v. *State's Attorney*, 31 *Ill.*, 68.
Barrett v. *Brooks*, 21 *Iowa*, 144.
Keltner v. *Story Co.*, 28 *Id.*, 35.
Adams Co. v. *American Emigrant Co.*, decided by this court at the present term.

4. The effect of the *settlement* of these grants by the officers, State and Federal, and the ratification of that settlement by the State legislature and Congress, we suppose to be an open question under any of the decisions heretofore made by this court.

Rec., *pp.* 95–116.
Arg., *p.* 95, &c.

The state statute appointing this commissioner is printed at large, *Rec.*, *p.* 99; *Acts of General Assembly and Congress*, *page* 116.

5. These lands were sold by the State, August 20, 1853, (*Rec.*, *p.* 120.) By the settlement with the company all lands "sold or *agreed* to be sold by the state prior to the twenty-third day of December, 1853," were excepted from the lands to be conveyed to complainant. (*Rec.*, *p.* 64; *Arg.*, *p.* 73.)

The first and third of these questions we suppose to be settled by the decisions of this court; the second, fourth, and

fifth we suppose to be open for discussion. The great bulk of this record is of no use here. The evidence is all documentary, and of course there can be no difference as to the facts; as to the law, we differ not as to the questions involved, but as to what the law is in respect to them. In our printed argument, prepared for the hearing in the circuit court, and printed immediately after the perfecting of this appeal, we have discussed these questions in the light in which we then saw them, and we know of nothing in the decisions of this court since that time requiring us to change what was then written. We cannot but feel that the repeated returns of these cases to this court, although they bring new questions with them, are much like the visits of unwelcome guests; but unwelcome as they must be, we still venture to ask from your Honors an examination of what there is new in the record now here.

The only portions of the record which it occurs to us your Honors will probably have occasion to read are—

Bill in circuit court, Rec., p 12
Wolsey's answer 16
State answer 19
Infants 21
Act of 1846 and acceptance 21
Section 8 of act of 1841 94
Joint resolution of March 22, 1858, and acceptance .. 63–5
Complainant's deed, Feb. 17, 1858 91
Deed to company, May 3, 1858 68
School land selections, July 20, 1850 98
Approved, Feb. 20, 1851 104
Wolsey's purchase, Aug. 20, 1853 120–122
Wolsey's patent, Dec. 21, 1854 123
Act of G. A. of Iowa, appointing commissioner, March 30, 1866 99
Settlement, June 20, 1866 101
Ratified by State, March 31, 1868; by Congress, March 3, 1871 116

The *general correspondence*, the effect of which as to the railroad grant of 1856 this court has settled in the cases already decided, is the same as in those cases. For convenience we have printed in our argument—

1. The Iowa railroad grant of 1856 before this court in *Wolcott* v. *D. M. N. Co.* 14
2. Section 10 of the act of 1841, before this court in *Welles* v. *Reilly* 14
3. The act of 1830, before this court in *Wilcox* v. *Jackson*. 17
4. The act of March 3, 1863, before this court in *R. R. Co.* v. *U. S.* 25
5. S. 8 of act of 1841, now here..... 13

Judge Wright's Argument.

Notes and Queries.—As the argument of Judge Wright embraces substantially all that is contained in that of Mr. Litchfield, a review of one may answer for an examination of both.

The argument, able as it is, is very general, and may perhaps be regarded rather as a general firing all along the line than as a direct attack upon any particular point of supposed weakness upon the part of the appellants. I suppose the accompanying brief may be regarded as a condensed statement of what may be found in the argument. It contains twenty-one propositions, reckoning by count, which I think however in substance may be reduced to less than one-third that number.

1. Beginning with the second numbering, one and two are the same thing, as they relate to and present for question, only the effect of a supposed excess of selections under the five hundred thousand grant, either before the admission of the State into the Union, or before the selection of the particular lands now in controversy.

This is a mistake of fact, although we deny that if well-founded, it would have the effect claimed. It may be

conceded that there was at some time an excess in the selections under this grant, but counsel are mistaken in assuming that these lands were the last selected, or that there was an excess at the time of their selection, July 20, 1850, approved March 5, 1851, (*Rec., p.* 98.) Date of certificate at Washington, Feb. 20, 1851, (*Id., p.* 104.) It is hardly necessary perhaps to trouble your Honors with references to the record for facts concerning which there is really no dispute. It is nowhere questioned that the selection was made at the time here indicated, (see appellee's statement of facts, Argument p. 3, No. 6,) nor is it claimed that was an excess of selections prior to September 12, 1874, (see same, p. 7, No. 31.)

If the facts upon which this argument is supposed to rest are not shown, I should need to beg your Honors' pardon were I to argue as to what the law would be if they were shown.

2. Number three alleges an estoppel. The dates, too, will answer that:

This land was selected July 20, 1850.

Approved Feb. 20, 1851; received at local office March 5.

Purchased by Wolsey and fully paid for August 20, 1853.

Rec., p. 122; *Appellee's Arg., p.* 3, *No.* 8.

Conveyed to him by patent December 21, 1854.

Rec., 123.

The first act relied upon by counsel to create this estoppel is January 25, 1855.

3. Four, nine, and eighteen embrace but one idea—the effect of the decisions of this court made in cases involving a construction of the Des Moines river grant as between it and the railroad grant of 1856.

4. Five and sixteen are both based upon the idea that appellant's grant requires a selection, and that appellee's does not.

5. Seven, eight, ten, eleven, twelve, thirteen, fourteen, and fifteen are but so many ways of saying that the lands were

reserved at the date of the selection under which appellants claim.

6. Eighteen relates to the settlement between the state and the general government, June 20, 1866; ratified by State March 31, 1868; by Congress, March 3, 1871.

Rec., p. 116.

What I have said in my argument upon that subject I do not care to repeat.

Nineteen is simply that they are right and we are wrong. I cannot better indicate my ideas of the argument than by such questions as occurred to me while reading it.

Argument.

Page 8. 1. Is it your opinion that a patent can be cancelled at the suit of a private citizen?

2. Do you claim that a sale made by a state for a purpose other than that expressed in the grant by the general government is void, the general government not questioning it?

Page 9. 1. What is the difference between your grant and ours, either as a donation or as to taking effect *in presenti?*

2. Do you claim that a patent after delivery may be recalled and cancelled by an executive officer?

Page 11. Will you point the court to the place in the record where the evidence that the Territory of Iowa, prior to its admission as a state, received more than the five hundred thousand acres granted to it, may be found?

Or, where it appears that the state had selected under that grant more than 500,000 acres prior to the selection of the lands in question?

2. Do you claim that Mr. Wolsey could be estopped by the acts of the state done after his purchase?

Page 12. Assuming, as I understand you do, that the cases already decided by this court hold that the settlement of 1866 between the executive officers of the state and of the general government was void for want of authority, would not the ratification by congress since those decisions make them inapplicable to the present case?

Page 13. 1. Does not the grant under which you claim provide both for an acceptance of the lands granted for the purpose therein named, after its admission into the Union, and for a selection of the lands granted? *Rec., p.* 21.

Is there any difference between your grant and ours as to selection?

Page 14. I do not understand what you mean by prejudicing *intervening* rights. Our grant was in 1841, yours, 1846; ours was accepted by the constitutional convention; the diversion from internal improvements to the support of schools was assented to by the act admitting the state into the Union; yours was accepted after its admission. Our selection was made in 1850; yours in 1853. Wolsey purchased in 1853, and obtained his patent in 1854; your contract with the State was made in 1854, and your patent was not obtained until after your settlement with the state in 1858.

If there are intervening rights to be protected, they are ours, not yours.

2. If our grant, as you maintain and we concede, did not attach to any particular lands until selection and approval, upon what principle do you claim that yours did?

3. The language of the act of 1841 as to new states is, "there be and is hereby granted."

Do you make a distinction upon strict verbal construction between there *shall be* and *there be and hereby is?*

Page 16. I see it is hard for you to avoid calling them *public lands.* See your argument, foot of page 17.

In the last paragraph of this page I think you assume as the basis of your reasoning the very point in controversy.

Page 18. 1. Over what lands, that are not public lands, has congress any power?

2. Do you understand that congress has the same power over an Indian reservation that it has over the general public domain, or lands in which the property is in the United States?

Page 20. Upon page twenty you intimate that that portion of my printed argument in which I endeavor to distinguish this case from those already decided by this court under the Des Moines river grant is a little misty. If you are in doubt as to its meaning, will you see if the language of the following extracts taken from the several grants referred to, are not sufficiently explicit to remove any doubts you may have as to whether there is or is not such a distinction.

1. Any lands which shall have been reserved for the use of the United States.

S. 1, *Act of* 1830.

Land which is reserved from sale by act of congress, or by order of the President, or which may have been appropriated for any purpose whatever.

S. 4, *same.*

Before this court in *Wilcox* v. *Jackson.*

2. Included in any reservation by any treaty, law, or proc-

lamation of the President of the United States, or reserved for salines, or for other purposes.

S. 10, *Act of* 1841.

Welles v. *Reilly.*

3. Reserved by act of congress or any other competent authority.

Iowa R.R., Act 1856.

Wolcott v. *D. M. N. Co.*

4. Reserved by the United States for any purpose whatever. Reserved to the United States by any act of congress, or in any other manner by competent authority.

Act of 1863.

L. L. and G. R.R. Co. v. *United States.*

5. Public lands remaining unsold, and not otherwise disposed of, encumbered, or appropriated.

Des M. R. grant, 1846.

6. Reserved from sale by any law of congress or proclamation of the President of the United States.

Sec. 8, *Act of* 1841, now here.

Do you wish to be understood in this portion of your argument that you understand this court when it has spoken of lands *reserved* generally and without other words, or of lands reserved *by competent authority*, to have either said or implied that there could be no competent authority, unless given in terms by some act of congress; and if you do not so understand it, by what process of reasoning do you infer from those decisions the conclusion that *law* and *competent authority* are so nearly of synonymous meaning that the latter implies the former?

Or, what sort of a *demonstration* is that by which you satisfy yourself, and "shut up" the argument (upon

pages twenty and twenty-one) that this court *must* have held in *Welles* v. *Reilly* that the letters of the various public officers, then in evidence, were a proclamation of the President of the United States?

If the court did so decide, this act should be so amended as to read, or by proclamation of the President of the United States, *express or implied.*

Page 21. Upon page twenty-one you ask in effect the question, If the decision in *Welles* v. *Reilly* does not imply that the lands then before the court had been reserved by *treaty*, *law*, *or proclamation*, and that there was no other way in which they could have been reserved under section ten of the act of 1841, why speak of treaty, law, and proclamation at all?

I think I may ask with better reason, If they do include all possible methods of reservation, why add "or *reserved* for salines or other purposes," or "Indian reservations," or "reserved alternate sections," or anything beyond the three methods which you say include all the rest?

Page 22. In your opinion, had the state any property in the lands granted by the act of 1846 until the grant was accepted by it according to the terms of the act?

2. When you use, in the last paragraph of this page, the language "reserved by *proper* proclamation," do you wish to be understood that there was in fact a proclamation, or simply that, in your opinion, there may be such a thing as an unexpressed or *implied* proclamation?

3. May I ask you to explain a little more fully what you mean at the bottom of this page by a *Presidential proclamation by the officers of a subordinate bureau?*

And I would like to ask you too, by the authority of Webster's Dictionary, from which you quote, whether there is not a well-defined distinction between

a proclamation and an order, as to the persons to whom they are respectively addressed.

For the remainder of the argument I do not see that I can strengthen what I have said in my argument already filed, in respect to the cases there referred to. I have tried to show that a very marked difference of language implies a difference of meaning; that when congress intended to include all, they have used language expressing that purpose; that when they intended to include a part only, as of lands reserved in a particular manner or for a particular purpose, they have used language expressing that intent; and while I was not quite satisfied that there was "no escape" from my conclusions, or that they came so near to a demonstration as to make my opponents "shut up," (*Appellee's Arg., p.* 21,) I did think, and I am still inclined to that opinion, that a part does not include the whole, and that a statute that excepts from its operation one thing or one class of things, or one *of* a class of things, does not by implication except other things or another class of things, or the whole of the one class, a part of which only is named. I thought too, and still think, that general language, "reserved," "reserved by any competent authority," "appropriated for any purpose whatever," and the like, is of broader comprehension than "reserved by treaty," "reserved by order of the President," or "reserved by proclamation of the President of the United States," and the like; in other words, that while the more general does include the particular, the particular does not include the more general. With these ideas before me, while it may be very easy for my learned friends upon the other side "to escape" conclusions which have forced themselves upon me, I have seen no means by which I could avoid them. These distinctions have seemed to me to arise naturally from the difference of language employed in these various statutes, and that it did not follow that a decision under one of them would necessarily be a precedent for the decision which this court will feel it its

duty to make when another one of them differing in language should be brought before it.

For the purpose of showing what has been heretofore claimed and what questions of law have been made and discussed by the complainant and those in interest with him, and upon which side of those questions they have stood, we have printed largely from their arguments now among the files of this court, arguments which could not have been more satisfactory to them at that time than they are at this time to us, and which are but very insufficiently answered, in our judgment, by those now filed by them.

PARSONS & RUNNELLS,
for Appellants.

SUPREME COURT

Of the United States.

RICHARD B. CHAPMAN,
Complainant & Appellee.

vs.

WILLIAM B. WOLSEY AND OTHERS,
Defendants & Appellants.

ARGUMENT

in behalf of the Grantees of the State of Iowa, under the Des Moines River Grant.

Filed by permission of the Court.

EDWIN C. LITCHFIELD,
Of Counsel.

Supreme Court

OF THE UNITED STATES.

RICHARD B. CHAPMAN, Appellee, *vs.* WILLIAM T. WOLSEY AND OTHERS, Appellants.	Argument on behalf of the title represented by Chapman. — Filed by permission of the Court. — EDWIN C. LITCHFIELD, *Of Counsel.*

This suit brings up again the question of title to a portion of the lands belonging to the Des Moines river grant.

Chapman claims title under the grant made by Congress for the improvement of the Des Moines river by the Act of 8th August, 1846, the Joint Resolution of 2d March, 1861, and Act of 12th July, 1862; while Wolsey claims title under the 500,000 acres grant made to Iowa by the Act of 4th September, 1841, which, by an Act of 2d March, 1849, Congress authorized to be used for school purposes. Hence, the lands acquired under the Act of 1841, are designated as School Lands.

By permission of the court this argument is filed in behalf of other grantees of the State under the Des Moines River Grant, whose interests are involved in the decision which may be made in this case.

In this case there is no dispute as to the facts, and we do

not recapitulate them here, but so far as may be necessary, we refer to the record or to the abstract presented by the counsel for the appellee.

Let us see, then, what are the precise questions here presented for consideration, and whether they are not already determined by the decisions of this court.

FIRST.—The title of the Des Moines N. & R. R. Company, grantor of Chapman, to the lands conveyed to it by the State has been determined to be a good and valid title by this Court in the seven following cases:

Wolcott *vs.* Des Moines Navigation & R. R. Co., Dec. Term, 1866, 5 Wallace, 681.
Burr *vs.* The Same, do. do.
Welles *vs.* Riley, Dec. Term, 1869, not reported.
Baker *vs.* Williams, " 1872, 17 Wallace, 144.
Cedar R. & Miss. R. R. Co. *vs.* Martindale and others, Dec. Term, 1872, 17 Wallace, 144.
Iowa Homestead Co. *vs.* Des Monies N. & R. R. Co. and others Dec. Term, 1872, 17 Wallace, 153.
Crilley *vs.* Burrows, Dec. Term, 1872, 17 Wallace, 167.

It is conceded that the title of Chapman must prevail unless this case can be distinguished from those above cited.

The defendant Wolsey, claims to have a title derived under the 8th section of the Act of 4th September, 1841.

But we submit:

SECOND.—The grant made to the State of Iowa by the Act of 4th September, 1841, was subsequent in time to, and in every respect subordinate to, the grant made by the Act of 8th August, 1846.

The river grant was made by the Act of 8th August, 1846; and the State always claimed that the grant extended above the Raccoon Fork to the northern boundary of the State. But in 23 How. 66, Litchfield *vs.* Dubuque R. R. Co., this court decided that it did not extend above the Raccoon Fork. There-

upon the State applied to Congress to confirm its claims as to the extent of the original grant, and Congress passed the Act of 12th July, 1862, which was entitled "An Act confirming a land claim in the State of Iowa, and for other purposes," which enacted that "the grant of lands to Iowa, made by the Act of 8th August, 1846, is hereby extended so as to include" all the lands which had been thus claimed under the original act.

And we say:

1. The confirmation of title and the grant made by the said Act of 12th July, 1862, relate back to the inception of the title by the Act of 8th August, 1846, and make the title *good from that date as against the government and all intervening claimants.*

In 4 Wallace, 204, Lanfear *vs.* Hawley, it was said that an act of Congress confirming a claim to land "confirms to the grantee whatever he was entitled to by the original grant, conceding that to have been valid."

In 6 Wallace, 418, Stark *vs.* Starrs, the court said: "When in fact the patent does issue, it relates back to the *inception* of the right of the grantee, so far as it may be necessary to cut off intervening claimants."

And this must have been the meaning of this court in the Iowa Homestead case, above cited, when speaking of the Joint Resolution of 1861, and the Act 1862, it was said: "This legislation was intended to put the State in exactly the position it would have been if there had been no dispute as to the extent of the grant of 1846."

So far, therefore, as the United States and all subsequent claimants under it are concerned, the title derived under the Act of 8th August, 1846, is a good title, *which dates from that day*, and cuts off all claimants under subsequent grants; and the Act of August 8th, 1846, and Joint Resolution of 2d March, 1861, and the Act of 12th July, 1862, taken together, are to have precisely the same legal effect as if they had all been enacted on 8th August, 1846, *so far as may be necessary to cut off intervening claimants.*

This being so, was a title made under the Act of 1841 *subsequent* to the title by Act of 8th August, 1846?

II.—The grant to the State of Iowa, under the Act of 1841, was *subsequent in time* to the River grant by Act of 8th August, 1846.

The grant to Iowa by 8th section of Act of 1841 was to the "new State," to be thereafter admitted into the Union, "upon such admission." The grant was not to the territory as was the grant by Act of 8th August, 1846, but it was only to the State *when admitted* to the Union, and it was so admitted only on 28th December, 1846. Prior to this date there was no grantee in existence which could take under the Act of 1841.

But by the terms of the Act of 1841, the grant thereby made only took effect when the land had been selected and located as therein prescribed. And the selection of the land in controversey, under the Act of 1841, was not filed until the 14th August, 1850, and the approval of it under that act was made on 5th March, 1851.

Here we have a starting point, and say the conflicting titles originated and compare as follows:

Chapman's Title.	*Wolsey's Title.*
Des Moines R. Grant, August 8th, 1846.	Date of filing of the selection of the land for school purposes, 14th August, 1850.

The origin of Chapman's title is thus seen to be *four years prior in time* to Wolsey's title.

As to the point of "*priority*" Wolsey's counsel argues that Chapman's title dates from the time when the Land Office, or the Secretary, approved the lists, under the Act of 8th August, 1846, to wit, in 1853: Whereas we claim, as was decided by this court in 23 Howard, 66, Litchfield *vs.* Dubuque R. R. Company, that the grant by Act of 1846, was a "*direct grant in fee*," and that the right of the grantee took effect from the date of the act, and not merely from the date of the subsequent approval by the Land Office. Such is always the effect of a direct grant by Congress, or of a confirmation by specific description of the lands granted.

12 Peters, 454, Strother *vs.* Lucas.

2 Howard, 319, Grignon's Lessees *vs.* Astor.

2 Howard, 316, Stoddard *vs.* Chambers.

On the other hand, the title, under the Act of 1841, was only to be made certain by a "selection," and could not attach until that selection was made and filed, on 14th August, 1850, and approved on 5th March, 1851: and this date is to be regarded as the time when the grant by the Act of 1841, first took effect—if it were admitted that the lands in question were liable to be appropriated under that act. But this is not admitted.

We attach no importance to the fact that the Land Department approved these lands in 1851, under the Act of 1841, for if the act of Congress did not authorize it, the approval was a nullity; and there is nothing in the Act of 1841 which authorizes it; and the other side must show, if it can, the Secretary's authority, which we deny. Mere errors of the Land Department cannot affect the question of title. In 23 Howard, 66, before cited, the court said: "On mature consideration, we are of opinion that the title of neither party has been affected by the proceedings in the Land Office, or by the opinions of the officers of the Executive Department, but that the claims of the parties under the two acts of Congress, must be determined by the construction to be given to those acts."

The "two acts of Congress," and "the construction to be given to those acts," must determine the rights of the parties in this case, as well as in the case in 23 Howard: and the "proceedings in the Land Office" and the "opinions of executive officers" cannot have any controlling influence upon the decision: and therefore, the fact that the Land Officers certified these lands under the Act of 1841, may be entirely disregarded until it is shown that some act of Congress authorized it.

We think it has been shown that in this suit Chapman represents the title which is *prior in time*, and the defendant Wolsey seeks to overthrow that title by one derived under a subsequent grant.

Let us, then, see the position of the defendants when brought to rely upon the strength of their own title.

THIRD.—The Act of 1841 makes only a limited and condi-

tional grant to the State of Iowa, and the defendants utterly fail to bring their case within its provisions.

I.—As already seen, the grant by the Act of 1841 could only take effect on or after 14th August, 1850.

Consequently it could not affect any lands which had been granted by Congress prior to that date—including those embraced in the river grant made 8th Aug., 1846.

And the selections under said 8th section of the Act of 1841 were to be made only from "any *public* lands, except such *as is or may be reserved* from sale by any law of Congress or proclamation of the President of the United States."

We submit:

II—On 14th August, 1850, the lands in question were *not* "public" lands within the meaning of said 8th section: But, at that date they had been lawfully "appropriated" and "reserved" for the purposes of the Act of 8th August, 1846, and they were not liable to be appropriated by the State under the Act of 1841.

(1.) They were not "public lands" within the meaning of the Act of 1841, because, previous to their selection under that Act, they had been duly appropriated to satisfy the Act of 8th of August, 1846.

In 13 Peters, 498, Wilcox *vs.* Jackson, the court said: That an "appropriation" is nothing more nor less than setting the thing apart for some particular use, "and whenever a tract of land shall have been legally appropriated to any purpose, from that moment the land thus appropriated becomes *severed from the mass of public lands*, and *no subsequent law*, proclamation or sale would be construed to embrace it, or to operate upon it *although no reservation was made of it.*" Upon this point we refer also to the two recent cases of Newhall *vs.* Sanger, and Leavenworth, Lawrence & Galveston R. R. Co. *vs.* the United States, decided Oct. Term, 1875, in which latter case the rule thus laid down in 13 Peters was expressly cited and reaffirmed; and which cases hold that the term "public lands" as used

in acts of Congress, refer only to such lands as are at the time "subject to sale or other disposal under general laws."

In the case of Newhall *vs.* Sanger, the court said:

"The subject of grants of land to aid in constructing works of internal improvement was fully considered at the present term in the Leavenworth, Lawrence & Galveston Railroad Company *vs.* The United States. We held that they attached only to so much of our national domain as might be sold or otherwise disposed of, and that *they did not embrace tracts reserved by competent authority, for any purpose or in any manner, although no exception of them has been made in the grants themselves.*"

It is admitted that the lands in controversy had been appropriated for the purpose of the Act of 8th Aug., 1846, by the decision of the Secretary on 2d March, 1849, that they were embraced in that grant, and by the order of the Commissioner of the Land Office on 1 June, 1849, withdrawing them from sale, and that such appropriation was noted on all the records of the Land Office in Washington and in Iowa, and was further evidenced by the formal certificates issued to the State from time to time, as the surveys progressed. It is true that the certificates thus issued were not effectual to pass the title to the State, as this court decided in 23 Howard, above cited. But, taken in connection with the prior orders of the Secretary and of the General Land Commissioner, they were conclusive evidence of an "appropriation" by the Land Office of these lands for the purposes of the grant made by the Act of 8th August, 1846.

And the "appropriation" thus made had the effect of taking these lands out of the mass of the public lands so that no subsequent grant, like that made by the Act of 1841, and taking effect in 1850 or 1851, would be construed as operating upon them, even if in the Act of 1841 no reservation had been made of them.

In 12 Wheaton, 586, Chotard *vs.* Pope, this court also held, that a grant by Congress, general in its terms, must be held to be "limited to that description of lands which are liable to be taken up at private sale."

And—

(2.) The lands were also duly "reserved by a law of Congress" within the meaning of the Act of 1841.

The act of 8th August, 1846, by its own force, *reserved* the lands *which the Department decided to be included in the grant.*

This must necessarily be so, for any grant made by Congress of any land for any particular purpose, puts it out of the power of Congress to grant the same land subsequently for any other purpose. Consequently it at once becomes *the duty* of the Land Office to *reserve* the lands. In the performance of this duty it necessarily follows that the department must act upon its own judgment as to the extent of such grant. It may make errors and may thus sometimes reserve more lands than are embraced in the grant. Notwithstanding any such error, the *reservation* will be effectual until the same is duly revoked or set aside. This question was fully considered and determined in the case of Wolcott and the subsequent cases in this court relating to the Des Moines titles.

In the Wolcott case the court said: "The grant of 8th August, 1846, *carried along with it*, by necessary implication, not only the power but *the duty* of the land office to reserve from sale all the lands embraced in the grant, otherwise its object might be utterly defeated. Hence, immediately upon a grant being made by Congress for any of these public purposes to a State, notice is given by the commissioner of the land office to the register and receiver to stop all sales, either public or by private entry. Such notice was given the same day the grant was made in 1856, for the benefit of the railroads. *That there was a dispute existing as to the extent of the grant of* 1846, *in no way affects the question.* The serious conflict of opinion among the public authorities on the subject made it *the duty* of the land officers to withhold the sale, and reserve them to the United States till it was ultimately disposed of."

Every act of Congress making a grant of lands, even if it does not in terms make any reservation of them, does *of itself reserve* the lands which are granted by it; and the reservation thus made takes effect from the date of the grant; and the acts of the executive officers formally withdrawing them from sale until the extent of the grant is finally determined, relate back

to and take effect from the making of the grant; and if the executive officers should fail to withdraw them from sale, the reservation created by the grant could not be thereby defeated; and until the extent of the grant has been finally determined, we think it necessarily follows that the reservation made by the grant must include all the lands which the Land Department *decides* are *included in the grant*—otherwise it might be many years before it could be known whether lands had been reserved by any particular grant or not, and thus the business of the Land Office would be thrown into inextricable confusion.

We therefore submit that every grant by Congress by *its own force reserves* all lands which the Land Department *decides* are included in the grant; and as such decision of the Land Office is made in execution of, and in supposed obedience to the command of the statute, it is proper to say that the lands thus reserved are reserved by the act of Congress, which the department is administering.

We claim, therefore, that on 14th August, 1850, these lands had been "*reserved by a law of Congress*," to wit, by the act of 8th August, 1846, as interpreted and acted on by the land officers; and that thus by the express terms of the Act of 1841, they were excluded from its operation.

In the Wolcott case, and in the four subsequent cases in which this title came before this court, it was held that all the lands of the Des Moines Company had been duly "reserved," so that they could not be taken under the railroad grant by Act of 1856.

If thus reserved from 1846, down to 1856, it is difficult to imagine how and why they were not reserved, and were therefore liable to be selected as school lands on 14 th August, 1850.

But the argument of the counsel on the other side is, that the language of the Act of 1841 is different from the language of the Act of 1856, and that what might constitute a reservation under the Act of 1856, could not reserve the lands as against the Act of 1841, and the selections thereunder made in 1850.

But—

(3.) In the cases of Welles *vs.* Riley and Crilley *vs.* Burrows

the title set up by Riley and Crilley, was a pre-emption title under the 10th section of the Act of 1841.

Yet the court in both cases held that the land had been *reserved* from 1846 down to 1861 and 1862, and as the claimants had in each of the cases made their selections and entries in 1855, and during this period of reservation, the court (in the Riley case) said as the claimant "entered upon the lot without right, and the possession was continued without right, the permission of the register to prove up the possession and improvements, and to make the entry under the pre-emption laws were acts in violation of law and void, as was also the issuing of the patents."

In both of these cases the court said they could see nothing to distinguish them from the Wolcott case; that is to say the *reservation* which was effectual to protect the lands against the railroad grant of 1856, was equally effectual to protect them against a title, by pre-emption, under the Act of 1841.

If the acts of the claimants in those cases in entering upon and selecting the lands in 1855, were "without right," and if all subsequent acts of the land office in permitting such entry and selection, and issuing certificates or patents therefor, were equally "in violation of law and void," upon what ground can it be claimed that similar selections of these lands under the Act of 1841, and certificates of approval in 1850, were valid?

The Des Moines river lands having, on 1st June, 1849, been expressly ordered to be withheld from sale, they could not, of course, be liable to be selected in 1850, by any party authorized to make selections under the Act of 1841.

In the seven cases, in which this court has considered this question, it has been held that all those lands were so protected by the reservation that no act of any of the land officers, in giving certificates to other claimants, nor an act of Congress granting the lands for railroad purposes, nor a patent signed by the President of the United States and issued to a pre-emption claimant under the Act of 1841, could impair the title of the Des Moines Company and its grantees. Yet these very cases decided that the land officers made a mistake as to the extent of the grant, and reserved lands which were not included in the grant. But the court said that the Act of 8th August, 1846,

gave them the power and made it *their duty* to reserve the lands; and the reservation was uniformly held to be good.

And we submit that—

(4.) The reservation of the lands belonging to the Des Moines river grant, (as interpreted by the Land Department in 1849), which has been established by the decisions of this court is a reservation which extended from 1846 to the time when the title was confirmed in the Des Moines Company by the Act of 1862; that it was a reservation not merely for some purposes, but for *all* purposes; and that it protected all the lands which the Department had decided were embraced in the grant, and protected them not only from being taken under the particular acts of Congress brought in question in those decisions, but also protected them from being taken under *any and all other Acts of Congress* which took effect *subsequent* to the Act of 8th August, 1846, and the specific reservations made thereunder; and consequently prevented their being selected and located in 1850, by virtue of the Act of 1841.

And we say—

(5.) The grant made by the Act of 1841 could not apply to the lands of the Des Moines river grant, which this court has so many times decided were reserved by competent authority, for the reason that said Act of 1841 "did not embrace tracts reserved by competent authority for any purpose, or in any manner, although no exception of them was made in the act," as this court has so recently decided in the cases of Newhall *vs.* Sanger and Leavenworth, Lawrence & Galveston R. R. Company *vs.* United States, above cited.

The counsel upon the other side, however, claims that when the State of Iowa obtained title to the lands under the Joint Resolution of 1861 and Act of 12th July, 1862, the title enured to Wolsey under the School grant, and not to Chapman, as grantee of the Des Moines Company, without reference to the purpose for which Congress made the grant, and without regard to the particular act under which the State acquired title.

Let us consider this proposition. We submit:

FOURTH.—The title which the State took under the Joint Resolution of 1861 and Act of 12th July, 1862, did *not* enure to make good Wolsey's claim of title, under the school grant, but *did* enure to make good the title of Chapman under the river grant.

I.—These lands when granted by Congress to Iowa, in 1846, were granted for the special purpose of "aiding to improve the navigation of the Des Moines river;" and the proceeds of the sales were expressly limited to be "expended upon said improvement;" with a prohibition against the State selling the lands "except as said improvements shall progress," and by the 4th section of the act it was declared that when the Territory of Iowa shall be admitted into the Union as a State, the granted lands shall become the property of said State "*for the purpose contemplated in this act, and no other.*"

And the State by joint resolution of its General Assembly of 9th January, 1847, accepted the grant "for the purposes specified in said act."

And—

II.—The Act of 12th July, 1862, extending the grant from the Raccoon Forks to the northern boundary of the State, expressly directed that "*such lands are to be held and applied in accordance with the provisions of the original grant,*" &c., and provided that "if the State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid," then the lands to be certified "shall enure to, and be held as a trust fund for the benefit of the person or persons respectively, whose titles shall have failed as aforesaid."

By joint resolution of 11th September, 1862, the State accepted this grant "upon the terms and conditions in said act contained;" and by chap. 37 of the Laws of 1862 declared that the lands "shall be held by the State in trust for the purposes for which it was granted to the State."

III.—The State, therefore, held these lands simply as a *trustee*, for the special purpose, and under the express injunction to apply them to improve the navigation of the Des Moines river, and to make good the titles to the lands it had sold as being a part of the river grant, *and for no other purpose*. Without the consent of Congress *it had no power* to dispose of them for any other purpose, and Congress never consented to have them used for school purposes; but consented that a portion of them might be used for railroad purposes.

The title derived by the State under the act of 1862, was a title *impressed with this trust*, which absolutely limited the land to the original purpose of improving the river, and of making good the titles to the lands which had been sold for that purpose; and such a title, held upon such a trust, *could not inure* to make good a title originating in another and subsequent grant for a different purpose.

These propositions seem too plain for argument; and we find them supported by this court in the decisions hereinbefore referred to, relating to the Des Moines river grant; all of which hold that the title acquired by the State was "for the use of those to whom she had sold them, as a part of that grant," thus excluding any idea that they could be diverted to protect purchasers from the State under another grant.

With entire respect for the State of Iowa, we submit that Congress alone had power to direct as to the disposition to be made of the lands—Congress was the donor and the State was only the donee, in trust, and as such trustee, the State was bound to carry out the intentions of Congress, and to abide by all the restrictions and limitations imposed by the terms of the grant.

The case of Cooper *vs.* Roberts, 18 Howard, 173, cited at p. 40 of the opposing argument, was a case where the grant to the State was "*without limitation of its power*." But in the case at bar, the power of the State over the granted lands, and the purpose to which they shall be applied, are limited and restricted by the terms of the grant, and the State and the lands are bound by such limitations and restrictions.

Even if Chapman and Wolsey are to be regarded as both innocent parties, and purchasers in good faith, and for value,

and if one must necessarily suffer by the failure of his title, and as the title *could not* be confirmed to both, it is for Congress, and not for the State to say whose title shall be confirmed. It is only the ordinary case of conflicting claimants to the public lands, and in all such cases the United States must decide between them.

Here this argument might terminate, and it would hardly be proper to prolong it, were it not that the State of Iowa has intervened and been made a party to this suit for the express purpose of procuring an adjudication as to the effect of the adjustment between the State and the United States, known as the Harvey adjustment made in 1866.

The State insists that by said adjustment, 12,813.51 acres of land (of which that now claimed by Wolsey is a part), which belonged to the Des Moines river grant, were deducted from that grant, and added to and made a part of the School Grant.

In its answer in this suit the State alleges that "by the terms" of said adjustment, said 12,813.51 acres were "confirmed to the State as a part of the grant made by the Act of 1841, and exempted from the operation of the Act of 8th August, 1846."

By chap. 79 of the Iowa Laws of 1866, preliminary to this adjustment, the State made the claim to hold said 12,813.51 acres as a part of the School Grant; and on 3d February, 1876, by joint resolution of the General Assembly of the State, relating to the "Des Moines River Lands," it was recited that, "Whereas, the title to the lands known as lands of the Des Moines River Grant up and along the Desmoines River above the mouth of the Raccoon Fork, after long years of litigation, are still unsettled," therefore, their representatives in Congress were instructed to obtain "such Congressional legislation as will, as far as just and practicable, secure the settlers on the lands of said grant titles to their homes, and forever settle the title to, and ownership of the lands of this grant."

It is obvious that while the State treats the title of the

lands of the grant "above the Raccoon Fork" as being still "unsettled"—notwithstanding this court settled it ten years ago in the case of Wolcott, and has reaffirmed that decision in six subsequent cases—and holds out to the settlers thereon the hope that through Congressional legislation they may secure the titles to their homes on the lands of this grant without regard to the rights of the true owners, it is important for all parties that the new questions involved should be decided by this supreme tribunal with the least possible delay.

It is important for the State, and its grantees to whom it has conveyed the lands under the river grant, and important for the claimants under the School Grant, and more especially and above all it is important for "the settlers," who are induced to go upon these lands without right, and are encouraged to claim them and occupy them under the idea that they are not private property, but that the State, or the United States, will by some form of legislation secure the titles to them without payment—to all these parties, as well as to the entire region where the lands are situated, and which has too long been afflicted with the curse of a litigated title it is of vital importance that a decision shall be reached which will, in the language of the joint resolution of the General Assembly of Iowa, "forever settle the title to, and ownership of, the lands of this grant."

Lawyers, including those who have been most frequently heard here in opposition to the title, know and admit that the title is already settled fully, finally, and "forever," except as to the 12,813.51 acres now in controversy—none more freely and unreservedly than the learned counsel who appears against us on this occasion. But sometimes persons of less legal learning, interested parties, scheming politicians, or factious demagogues, seize upon questions of this kind to attain some local object or temporary notoriety, and unless they are met with decisions which can neither be misunderstood nor overruled, they throw whole communities into confusion, inflicting upon them irremediable injury. In such cases, the parties who are least able to bear such injury are "the settlers" who have been led by designing men unneces-

sarily to put at risk the labor of years in the attempt wrongfully and by force to establish their homes upon the property of private owners, while the government offers them lands elsewhere freely, and without price.

Trusting that the decision which may be rendered in this case may meet these difficulties *in limine*, and that, while settling the question as to the ownership of the lands in controversy, it may be of great service to the entire community where they are situated, we unite fully in the hope expressed by the counsel on the other side, that this court will now consider the questions arising upon the adjustment of 1866, and determine their precise legal effect.

In proceeding to consider these questions, we submit—

FIFTH.—The adjustment made between the State and the Land Office in 1866, could not in any manner affect the legal right to the lands which had previously been vested in the Des Moines Company and its grantees by the legislation and patents of 1858, as confirmed and made good by the Congressional resolution of 1861 and Act of 1862.

The counsel upon the other side gives his views as to this adjustment, and its legal effect at page 59 and following pages of the opening argument.

He claims that the State had never accepted the grant made by the joint resolution of 2d March, 1861, and that it would not take effect until accepted by the State; and that therefore it was necessary for the State and the United States to adjust the grant for the purpose of determining its extent and the particular lands embraced in it; and that "by the joint action of the grantor and grantee a new direction may be given to the grant"; and that by the adjustment the 12,813.51 acres involved in the decision in this suit were (in the language of the answer of the State set out in the record) "confirmed to the State as a part of the grant by the act of 1841, and exempted from the operation of the act of 8th August, 1846"; "that the case presents simply a question of power"; and "that the lands were, at the time of the settlement, subject to the action which was thus taken" p. 70.

In reply to these claims, we submit:

I. There is nothing in the adjustment to show that it intended to exempt the 12,813.51 acres from the operation of the act of 8th August, 1846, or to confirm them to the State as a part of the grant by the act of 1841: On its face it only purported to be a settlement as to the quantity of land embraced in the Des Moines River grant, and it did not profess to enlarge the grant made by the act of 1841.

It was entitled "Adjustment of the Iowa Des Moines River Grant under the Act of July 12th, 1862, and Joint Resolution of 2d March, 1861."

The quantity of land granted was stated as follows:

"CREDIT."

"The State of Iowa, with the whole area of the grant above the Raccoon Fork, 558,004.06 acres."

No adjustment of the School grant is indicated by this language.

Having thus ascertained the quantity of land embraced in the river grant, the State was *debited* with sundry items showing what had been already certified under that grant, and what remained to be certified, and also with 35,473.64 acres which the State had received under the school grant by the act of 1841, *in excess* of the 500,000 acres thereby granted.

Having thus balanced the account, the adjustment was *certified*, thus:

"General Land Office, May 21, 1866.

J. M. EDMUNDS,
Commissioner General Land Office."

It was then approved by the Secretary of the Interior, as follows:

"Department of the Interior,
May 22d, 1866.

"The adjustment as herein stated is hereby approved.

JAS. HARLAN,
Secretary."

It was also approved in behalf of the State of Iowa, on the

20th June, 1866, by the Census Board of the State as required by law, and was ratified by the State by act of the General Assembly on 31st March, 1868, in which it was spoken of as "the settlement with the United States," and no reference whatever was made in this confirmatory act of the State to the school lands, or to the Act of 1841; but on the contrary, it was an act dealing exclusively with the lands of the Des Moines River Grant.

If the adjustment makes anything clear and beyond dispute it is that the State received 558,004.06 acres of land *by virtue of the Des Moines River Grant*; and it does not show that the State received 535,473 54 acres under and by virtue of the school grant; on the contrary, it shows that the State, having received 535,473.54 acres *nominally* under the school grant, the grantor and grantee, by this adjustment, recognized that 35,473.54 acres of that quantity was an *excess* beyond what the State was entitled to receive by the act of 1841; and the State undertook to pay that excess by receiving under the river grant 35,473.54 acres less than it was entitled to receive under it. In other words they agreed to exchange 35,473.54 acres of the land which was due under the river grant against an equal quantity which had been overpaid under the school grant.

It is the same as if the State, having actually received patents or certificates for the 558,004.06 acres to which it was entitled under the Des Moines River Grant, had afterward reconveyed to the United States 35,473.54 acres in payment for the excess quantity received as school lands.

The transaction shows that *the right* of the State to receive the lands, which was recognized by the Department, was a right to receive 558,004.06 acres under the Des Moines River Grant, and to receive *only* 500,000 acres under the School Grant.

It did not profess to know what the State had done, or might propose to do with the land after its title should be perfected, nor did it deal at all with the question who were the State's grantees, nor whether there was any conflict of interest between them, nor in any manner attempt to decide between contesting claimants under the State. Upon the face of the adjustment it appeared to be what the counsel terms it at page 62 of his argument—simply "one of the steps by which the title in fact vested in the State" under the river grant.

II.—The Commissioner of the General Land Office, and the Secretary of the Interior had no authority to make the adjustment except such as was conferred upon them by the previous acts and resolutions of Congress relating to the Des Moines River Grant, and if in said adjustment they attempted to make any disposition of the lands not previously authorized, or subsequently confirmed by Congress, their attempts were simply nugatory and without effect.

This proposition is sufficiently established by the decision of this court in 23 Howard, 66, Litchfield *vs.* The Dubuque and Pacific R. R. Company, where the court said: "On mature consideration we are of opinion that the title of neither party has been affected by the proceedings in the Land Office, or by the opinions of the officers of the Executive Department, but that the claims of the parties, under the two acts of Congress must be determined by the construction to be given to those acts." * * "No authority was conferred on the executive officers administering the public lands to do more than make partition between the tenants in common, Iowa and the United States, in the manner prescribed by the Act of Congress."

"The premises in dispute lie sixty miles beyond the limits of the tract granted. It was therefore impossible to make partition under this grant, of lands lying outside of its boundaries, and all attempts to do so were merely nugatory."

III.—The various acts of Congress relating to the Des Moines River Grant had fully settled all questions as to the purposes for which the grant was made, and had left to the executive officers no authority except to ascertain what lands were granted, and to make the proper certificates for transferring the title.

The original grant by the Act of 8th August, 1846, was of "one equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, encumbered or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory, by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

The act further provided that the lands should "not be con-

veyed or disposed of by the Territory or State, except as said improvements shall progress;" and the fact of the expenditure on the improvement should be certified to the president; also that the river thus to be improved shall "remain forever a public highway for the use of the government of the United States, free from any toll or other charge;" and that the lands should "not be sold at a price lower than the minimum price for other public lands;" and that when the Territory becomes a State the lands should become the property of the State "for the purpose contemplated in this act, and no other," with a *proviso* "that the Legislature of the State of Iowa shall accept the said grant for said purpose."

On 9th July, 1847, the Legislature of the State accepted the said grant "for the purposes specified in the act."

Under this act nothing remained for the land office to do except to make partition, in the manner prescribed; and whatever they did in excess of that authority this court has pronounced to be "simply nugatory."

Consequently, all the lands above the Raccoon Fork, which had been erroneously certified under the act of 8th August, 1846, remained the property of the United States, and those certificates failed to transfer the title.

Then the joint resolution of 2d March, 1861, released "to the State of Iowa" "all the title which the United States still retained" in the lands above the Raccoon Fork, which had been "improperly certified to said State by the Department of the Interior as a part of the grant by the act of Congress of Aug. 8, 1846, which is now held by *bona fide* purchasers under the State of Iowa."

Under this resolution it became the duty of the Land Department to determine *what* lands had been thus improperly certified, and what portion of them were then held by *bona fide* purchasers under the State.

There being nothing in the resolution prescribing the manner of conveying the title to the State, the counsel for Wolsey assumes that this must be done in the manner and upon the conditions specified in the act of 8 Aug., 1846; that is by a "selection" by the State, and "approval by the secretary"—or, in other words, he claims that an adjustment was necessary,

assented to by both the State and by the secretary, to determine what lands had been improperly certified, and what lands were thus held by *bona fide* purchasers under the State; and that no title vested in the State until this was done.

Were we to admit this proposition, it is not perceived how it would affect the vital question here involved—which is not whether the adjustment was "one of the steps by which the title was transferred from the United States and vested in the State" (as claimed by counsel at page 62 of his argument)—but *what effect* that adjustment had upon the title *after it became vested* in the State of Iowa; and whether it caused that title to enure to make good the claim of Wolsey under the School grant, or of Chapman under the River grant.

It is claimed that no concurrent action of the authority of the State and the United States, took place after the 2d March, 1861, and prior to 12th July, 1862, by which the particular lands referred to in the joint resolution were set apart or designated; and that no act of the General Assembly of the State prior to 12th July, 1862, had in terms accepted the grant made by the joint resolution; and the counsel argues that the grant thus made would not take effect until accepted by the State.

We do not see how this can be important, for the act of Congress of July 12th, 1862, related in terms *to all the* lands above the Raccoon Fork originally supposed to have been included in the Des Moines River grant, and covered as well the lands included in the joint resolution as the lands situated still further north, and not embraced in that resolution. And that act of Congress not only specified the lands granted, but also expressed the purpose of the grant, and the trust upon which it should be held by the State and the manner in which the title should be transferred.

If, then, the joint resolution of March 2d, 1861, is thrown entirely out of consideration, the two acts of Congress of 8th August, 1846, and of 12th July, 1862, cover the whole case and dispose of all questions here involved.

We have already seen that the act of 8th August, 1846, made it necessary that the granted lands should be determined by a "selection" by the State, "subject to the approval" of the Secretary.

The act of 12th July, 1862, "extended" the grant made by the act of 8th August, 1846,—directing the granted lands to be "held and applied in accordance with the provisions of the original grant,"—and contemplated that the title should be transferred to the State by certificate from the Interior Department; and it directs the secretary in a certain contingency to set apart lands "to be certified;" and again it speaks of lands "which shall be certified to said State * * by virtue of the provisions of this act."

The two acts of 8th August, 1846, and of 12th July, 1862, being acts *in pari materia*, and, therefore, to be construed together, thus provide that the lands granted shall be "selected" by the State, "subject to the approval" of the Interior Department, or that when thus selected they shall "be certified" to the State.

For the purpose of ascertaining what lands had been granted by the Act of 1862, and setting them apart to the State, the Interior Department had authority. In the manner prescribed by the Acts of 8th August, 1846, and 12th July, 1862, the State might "select," and the Interior Department might "approve" the selection of the granted lands, or then might "certify" them to the State, and thereby the legal title would pass to the State; and up to the time of thus certifying them, the Department had such authority as was necessary for that purpose.

As between the State and the United States, this settlement might be conclusive; but it could not affect the rights of any other parties not assenting to it, if it had attempted to interfere with such rights—But we do not see that it made any such attempt.

We think that it has been shown that under the various Acts of Congress relating to the Des Moines River Grant, the only power conferred upon the land officers was to make the partition between the State and the United States, by approving the States selections and certifying the lands to the State as provided in the Acts of Congress; And that in making such adjustment, nothing could be lawfully agreed to which was not in accordance with the Acts of Congress making the grant. And we have already, as we think, shown that the adjustment, on its face, was in accordance with the Acts of Congress making the grant.

But the counsel for Wolsey argues, that as the grant was made by Congress to the State, and it could be adjusted only with the State, it was competent for the State and Land Department to make an agreement, independent of the Acts of Congress, and not authorized by those acts, whereby the lands falling to the State under one grant should be increased, and he lands falling to the State under a different grant should be diminished in an equal amount. That "the case presents simply a question of power" (p. 70 of his argument): and that "this land, at the time of the settlement, was subject to the action which was then taken;" and that the lands in question were thereby transferred from the Des Moines River Grant to the school Grant; and he says at page 65 of his argument that by this adjustment an attempt was made "to settle the *status* of the particular piece of land now here in controversy. It was confirmed as school lands, re-certified as such, and other land certified to and accepted by the State in lieu of it."

We do not so understand the adjustment; but if the counsel is correct in this statement then the question presented by him is—

IV.—What is the precise *status* of lands which have been granted by an Act of Congress, *after* the grant is made, and *before* the title has been perfected in the grantee by issuance of the patent or certificate? And what is the extent of the power and control over them retained by the government or by the Land Department up to that time?

It is not denied that a certain degree of power and control remains in the government up to the time of the final transfer of title.

What is its nature and extent?

(1.) In ordinary grants to States, in trust for improvements, it has been determined that "Congress may at any time repeal the Act creating the trust, if not executed, and withdraw the power."

1 Black. Rep., 356, 378, Rice *v.* Railroad Company.

(2.) It has been determined that after lands have been thus granted to a State for railroad purposes, and the trust has

been executed by the construction of the road, in part at least, "the United States, until she conveys them by patent or otherwise has an interest, whether it be legal or equitable, which the State is not at liberty to divest by the exercise of the right of taxation." And again, "We are of opinion that where the original grant has been perfected by the issuance of the patent, the right of the State has become perfect."

22 Wallace 444, Railway Company *v.* McShane and others.

(3.) It has been determined that in such cases of grants to States, that "the State could not tax the lands while the title remained in the United States."

22 Wallace, p. 572.

(4.) In a case arising under the Des Moines river grant, it was determined that after the grant was made and fully executed, except that the Land Department had not made the final transfer of title, the department had the right to deal with the lands as public lands, and the Land Office might exercise their judgment and discretion in all questions relating to them, and might offer them to preemption and homestead entries, and that this court would not interfere with the exercise of such judgment and discretion of the Land Office until *after* the transfer of the title.

9 Wallace, 575; Litchfield *v.* Register & Receiver.

These cases undoubtedly determine that, up to the time of the final transfer of the title, the United States continues to stand as record owner of the lands, and for some purposes, and to a limited extent, may assert control over them as owners—they may protect them against taxation by the States which are grantees, as they might undoubtedly protect them against private trespassers; and the Land Office may deal with them as public lands by offering them for homestead or preemption entries notwithstanding the prior grant—subject, of course, to have their error, if they make any, corrected by the courts, *after* they have finally acted and transferred the title.

According to the foregoing cases, the United States, retain a certain degree of interest in, and control over, the lands, em-

braced in public grants, until the final transfer of title by patent or certificate.

The precise time when this interest and control of the United States ceases in regard to such granted lands, seems to be either when the legal title has been actually transferred by patent or certificate—or if such transfer has not been made—then when the grantee has done every act which is necessary to be done in order to make perfect the right to demand the title. In either of these cases, as we understand the above cited decisions, the interest and control of the United States terminates.

A good reason for a certain degree of control in regard to all such grants of lands, in trust, may be that the United States as grantor, has the right to insist that its grantee and trustee shall carry out the purposes of the grant, and retains the title, as security that this shall be done; and until it is done, it may well be that the United States, under most of these grants, would retain a sufficient degree of interest in and control over the lands to prevent any diversion of them from the purposes for which the grant was made. This would be merely in aid of and as subsidiary to the original grant and not in hostility to it.

But the argument of the counsel in this case goes to the extent that the power retained by the United States *after* a grant is made, and *before* it is perfected by the final transfer of the legal title, is so complete that it may totally or partially divert the granted lands from the purpose for which the grant was made, and apply them to the purpose of another and later grant. *As between the State and the United States*—they both assenting—and no other party being interested—it is not doubted that they could make such new bargains as they might mutually agree to; and *so far as they alone* are concerned, in their dealings with each other, the adjustment may be conclusive. But so far as other parties are concerned the United States retained no power over the lands of the Des Moines River Grant, *after* the grant was made and executed by the State and *before* it was perfected by the transfer of the legal title, except such as was necessary to preserve them and protect them until they should be legally transferred by patent or certificate for the

purposes of the grant—and had no power to divert them to the purposes of any other grant.

In the present case Iowa had fully executed the Des Moines River grant, and had done everything which was necessary to entitle her to demand the legal title *except* that she had not agreed with the United States as to the particular lands covered by the joint resolution of 2d March, 1861, and Act of 12th July, 1862, and had not obtained the certificate necessary under the law of 1862; and we respectfully submit that no power remained in the United States over those lands, except to keep control over them to the extent necessary, until such selections and certificate were made in accordance with the acts of Congress, and that the power to divert the lands from the River grant and apply them to the School grant, did not exist.

Counsel argues that both grantor and grantee assented to withdraw the 12,813,51 acres from the operation of the first grant and to apply them under the second grant. If this were so, the arrangement might be binding upon them as parties to the agreement; but would not be binding upon us, not parties to the agreement, and never having assented thereto. We have already shown that we do not see anything in the adjustment which attempts to transfer these lands from one grant and to confirm them under the other grant.

But the counsel opposed to us says: These lands were "confirmed as School Lands, recertified as such, and other "land certified to and accepted by the State in lieu of it" (p. 65 of Argument).

It will be remembered that in 1851 these lands had been certified under the School Grant; that afterwards it was discovered that they belonged to the River Grant, whereupon the said certificates of 1851 were cancelled, and the lands in 1853 were certified to the State as part of the River grant; and in 1866, after this adjustment was made the lands were again certified under the School grant; and to this re-certification we suppose he refers.

And he insists that the adjustment as made between the State and the Land Department has been ratified by Congress by the Act of 3d March, 1871, and seems to suppose that by such

ratification of the settlement, *his construction of its meaning* has also been confirmed.

From this conclusion we dissent.

V.—The act of Congress of 3d March, 1871, did nothing more than to confirm to the State the title to the lands which had been certified to it by said adjustment, and which certificate formed part of the adjustment, and did not confirm or ratify any variation from the acts of Congress by which the grant was made.

The Act of Congress of 3d March, 1871, is entitled, "An Act confirming Titles to certain Lands." And it enacts that the title to the land certified to the State of Iowa, * * under the Act of 1862, "in accordance with the adjustment," &c., * * * "which adjustment was ratified and confirmed by Act of the General Assembly of Iowa," &c., "be, and the same is hereby ratified and confirmed to the State of Iowa and its grantees, in accordance with said adjustment and said Act of the General Assembly, *provided*, that *nothing in this act shall be so construed as to affect adversely any existing legal rights*," &c.

Here there is nothing whatever to sustain the idea that by this act Congress intended to change the provisions of the previous acts relating to the Des Moines River Grant. All the previous acts of Congress relating to this grant are to be read and construed in connection with the Act of 3d March, 1871. Being acts *in pari materia* they are to have the same effect as if they all formed parts of one act. And it has been seen that the legislation by Congress prior to 1871, had specified the granted lands, had prescribed and limited the purpose to which the grant should be applied, and had pointed out the mode of selection and approval, and of the transfer of title; and there is nothing whatever in the Act of 1871, which in any manner conflicts with these provisions of the prior acts. That act confirmed to the State and its grantees a large quantity of lands which had been erroneously certified to the State under that adjustment—as this court affirmed in the case of the Iowa Homestead Company *vs.* Des Moines N. & R. R. Company and others, 17 Wallace, 153. These lands, thus erroneously certified, and confirmed to the State by the Act of 1871, are not

at all in question in this litigation—that is to say, that no claim to them has ever been made by the Des Moines Navigation Company, or its grantees, and the State never conveyed them to the said Company.

The intention and effect of the Act of 1871, therefore was merely to confirm to the State the title to the lands which had been certified by the Land Department, under the Act of 1862, in accordance with said adjustment, including those which were erroneously certified under a misconstruction of the previous acts relating to the Des Moines River Grant; and so far from thereby sanctioning any diversion of the lands granted by the Act of 12th July, 1862, from the purpose therein specified of making good the title to the lands which the State had sold and conveyed, it expressly prevented any such result by the *proviso*, "that nothing in this act shall be so construed as to affect adversely any existing legal rights."

Counsel says that the lands were "confirmed as School lands and re-certified as such;" and we understand his argument to be that the Act of Congress of 3d March, 1871, confirms and ratifies this *re-certification* of the lands as School lands.

We do not so understand its meaning.

As seen above, the act merely confirms to the State "the title to the land certified under the Act of 1862."

Counsel seems to suppose that this refers merely to the certificates of *portions of* these lands which were separate from, and given *after, the adjustment*, of which the certificate for the 12,813.51 acres was one, and was dated 28th May, 1866.

(See Iowa Homestead Record, in this court, p. 222.)

We do not understand that certificates for the total quantity of 558,004.06 acres have ever been given separate from and subsequent to the adjustment. That document sets out that large quantities of the lands had been certified previously, 297,603.94 acres by a special certificate, and another parcel of 11,651.80 acres, &c. But for some amounts certificates were issued *subsequently* to the adjustment, of which that for the 12,813.57 acres was one. Counsel's argument seems to assume that the Act of 3d March, 1871, relates to, and there-

fore only confirms the title to the lands so *subsequently* certified.

On the contrary we understand the law to confirm to the State the title to the entire quantity of 558,004.06 acres included in the grant as thus adjusted.

As already seen the adjustment *credits* the State of Iowa with the whole area of the grant, 558,004.06 acres, and *debits* the State with lands previously certified, &c., and after striking the balance it was *certified* by the commissioner of the Land Office and *approved* by the secretary.

It is this certificate to which the Act of 3d March, 1871, referred. The previous acts of Congress did not require that the certificate should be in any special form, or that it should set out any detailed list of lands—such detailed lists of lands, by the act of 1854, being requi ed only in cases where the act of Congress does not vest the fee—but only that the secretary should "certify them to the State." To certify means only to "testify in writing" to any fact, and by the adjustment and certificate, the secretary did testify in writing that the State was entitled to receive 558,004.06 acres, being the whole area of the grant under the Act of Congress of 12th July, 1862, which act had particularly specified the lands as being "the alternate sections designated by odd numbers, lying within five miles of said river, between the Raccoon Fork and the northern boundary of the State." The certificate annexed to and forming part of the adjustment, was the certificate referred to in the law of 3d March, 1871—and that certified "the whole area of the grant"—558,004.06 acres.

Besides the special certificate for 12,813.51 acres, dated 28th May, 1866, and which the counsel claims was confirmed by the Act of 3d March, 1871, was not given "under the Act of Congress of 12th July, 1862," as specified in the Act of 1871, but was given *under the Act of* 1841, and was originally certified under that Act on 20th February, 1851, and there is nothing in the Act of 3d March, 1871, which confirms any title to any lands certified under the Act of 1841.

We think that the material questions in this case have been considered. Further questions have been suggested on the other side, and elaborately discussed, with lengthy quotations

from arguments of various counsel in former cases, which they claim sustain their views. But as we do not attach importance to what any counsel may have *argued* in former cases, but only to what the court may have *decided*, we would not be justified in taking up time by further reply.

Upon the whole case, we respectfully submit that the judgment below should be affirmed.

EDWIN C. LITCHFIELD,
Of Counsel.

IN THE

Supreme Court of the United States.

WILLIAM B. WOLSEY, ET AL.,
Appellants,

vs.

RICHARD B. CHAPMAN,
Appellee.

ARGUMENT FOR APPELLEE.

GEO. G. WRIGHT,
OF WRIGHT, GATCH & WRIGHT,
Attorney for Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

WILLIAM B. WOLSEY, ET AL., *Appellants*, *vs.* RICHARD B. CHAPMAN, *Appellee.*	*Appeal from the Circuit Court of the United States for the District of Iowa.*

ARGUMENT FOR APPELLEE.

GENERAL STATEMENT OF THE CASE.

We have here, if possible, still another phase of the Des Moines River Land litigation. Appellee by his bill asks to set aside a patent issued by the State of Iowa to the appellant Wolsey to eighty acres of land which is above the Raccoon Fork and within five miles of the Des Moines river, in said State, being a part and parcel of the lands certified and approved to said State under the Act of Congress of August 8, 1846, which, as this court will *perhaps remember*, granted certain lands to the Territory of Iowa "to aid in the improvement of the navigation of the Des Moines River." Appellee claims under this Act, as also the subsequent legislation of Congress concerning these lands—the action of the President with the several heads of Departments—the legislation of the Iowa General

Assembly — and a conveyance by the State following and based upon such legislation, State and National, and said acts of the President and the Departments.

The appellant claims under the Act of Congress, approved Sep ember 4, 1841, "An Act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," and the subsequent action of the State and other authorities, legislative and otherwise, leading to the patent from the State, which is here sought to be cancelled.

Chronological Statement of the Material Facts.

Appellants' counsel having set out at some length the several Acts of Congress and of the Iowa Legislature—and as these Acts are of easy reference—we shall not repeat them; but that the court may see at a glance just where and how the issue herein hinges, we present in chronological order a brief summary of the facts by the light of which the case must be determined

1. On the 4th of September, 1841, Congress passed the "Act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," and the amendment of March 2, 1849, authorized a diversion of the 500,000 acre grant to school purposes.

2. On the 8th of August, 1846, Congress passed the "Act granting land to the State of Iowa in the alternate odd sections along the Des Moines River for the improvement of its navigation."

3. On the 2d day of March, 1849, the Secretary of the Treasury declared and decided that the grant of August 8, 1846, extended to the northern limit of the State and embraced the lands lying in the odd numbered sections within five miles of the Des Moines River and above the Raccoon Fork.

4. Pursuant to this decision of the Secretary, the Commissioner of the General Land Office, on the 1st of June, 1849, instructed the Register and Receiver of the proper Land Office in Iowa to withdraw and "withhold from sale all the said lands in the odd numbered sections above the Raccoon Fork."

5. Under this decision of the Secretary and order of the Commissioner, as early as June 16, 1849, the said lands were withdrawn from sale for the purposes of the said grant, and were wholly withheld and reserved from entry and from selection for other purposes; that such reservation was maintained and continued without interruption down to the congressional legislation in 1861 and 1862.

6. About the year 1850 the State agents selected in Webster county, under the eighth section of the Act of 1841, 28,-378.46 acres, which were approved to the State by the land officers of the United States, under said Act, on the 20th of February, 1851, and included the land in suit.

7. On the 7th day of June, 1853, Thomas H. Benton, then Superintendent of Public Instruction, ordered the said lands into market as school lands and directed the sale thereof.

8. Under the direction of Benton, John Tolman, School Fund Commissioner of Webster County, proceeded to make sales of said lands, and on the 20th day of August, 1853, contracted, with other lands, the tract in dispute to the defendant, Wm. B. Wolsey.

9. On the 30th day of December, 1853, the United States land officers approved and certified 12,813.51 acres of said lands, including the tract in suit, to the State of Iowa, as passing to said State under the said Act of August 8, 1846, and revoked the certificate and approval thereof to the State under the said Act of September 4, 1841, on the ground that

the same belonged to the grant of August 8, 1846, and had been certified to the State under the Act of September 4, 1841, improperly, under mistake and without authority.

10. On the 6th of January, 1854, the Commissioner of the General Land Office by letter addressed to said Benton enclosed a list of the 12,813.51 acres, and advised him that the certificate and approval thereof to the State under the Act of September 4, 1841, had been revoked; that the said lands belonged to the State under the Act of August 8, 1846, and that the State was entitled to select an equal quantity elsewhere in lieu thereof.

11. On the 6th of January, 1854, the Commissioner of the General Land Office, sent to G. Gillaspy, Register of State Land Office, a list of the 12,813.51 acres and advised him that they fell within the Des Moines River grant; that they had been selected under the Act of September 4, 1841, and erroneously certified to the State under that Act previous to the adjustment of the grant and before it was known that they belonged to the State under the Des Moines River grant, and that the State had been advised that it could select an equal quantity elsewhere.

12. January 7, 1854, the Commissioner of the General Land Office sent to the Register of the State Land Office a copy of said list of 12,813.51 acres with letter of same import as that to G. Gillaspy, above referred to, and instructed the Register "to place these selections upon his plat and tract books as approved under the Act of August 8, 1846, and to cancel the approval of the same as selected under the Act of September 4, 1841."

13. January 18, 1854, Benton, Superintendent, informed Tolman of the revocation of the selection and approval of said lands as school lands by the Commissioner of the General Land Office, and instructed him to suspend all action in regard to the said lands until further orders; that he would make an

effort with land office to have the lands retained as school lands, and if he failed he would instruct Tolman to cancel sales and refund to purchasers their money.

14. On the 18th of January, 1854, Benton, by letter and through Hon. B. Henn, applied to the Commissioner of Land Office to review his action and retain the lands as school lands, but the application was denied on the ground that the 12,813.-51 acres were set apart and actually belonged to the Des Moines River grant, as per letter of Commissioner to Benton, dated February 2, 1854.

15. June 9, 1854, the State made and entered into a contract with the De Moine Navigation and Railroad Company by which, in consideration of labor and money to be expended by said company in the improvement of the navigation of the Des Moines River, the State bargained, contracted and sold to said company the lands above the Raccoon Fork, including the said 12,813.51 acres.

16. December 24, 1854, the State executed to the defendant, Wm. B. Wolsey, a deed or patent for the tract in controversy herein.

17. January 25, 1855, the General Assembly of the State passed the act entitled, "An Act for the relief of the settlers on certain river lands," directly recognizing the title of the said De Moine Navigation and Railroad Company to the lands sold by Tolman.

18. February 17, 1858, the said De Moine Navigation and Railroad Company, claiming the right so to do under its contract with the State, granted and conveyed to complainant the tract in dispute, with other lands.

19. March 22, 1858, the State, recognizing the claim of the De Moine Navigation and Railroad Company to the land above Raccoon Fork, under its contract with the State, its

General Assembly passed a "joint resolution" containing proposals for settlement with said company for its claims under said contract, in and by which the State acknowledges "the said contract and the sale to the said De Moine Navigation and Railroad Company of all the lands *which had been certified and approved to the State by the General Government* under the Act of August 8, 1846, saving and excepting all lands sold and conveyed, or agreed to be sold and conveyed, by the State of Iowa, by its officers and agents *under said grant* prior to December 23, 1853, including in the exception 25,487.87 acres lying immediately above Raccoon Fork, supposed to have been sold by the General Government.

20. April 15, 1858, the De Moine Navigation and Railroad Company accepted the proposals for settlement contained in said "joint resolution" of the General Assembly.

21. May 3d and 18th, 1858, the State of Iowa, by deed or patents duly executed, conveyed to the De Moine Navigation and Railroad Company, all the lands above the Raccoon fork, (but those excepted by said joint resolution) including the said 12,813.51 acres, and the tract in dispute.

22. January, 1860, the Governor in his message to the General Assembly, stated that "the State had selected under 500, 000 acre grant, 12,813.51 acres, chiefly in Webster County, belonging to Des Moines River grant, which was approved February 20, 1851 ; that in June, 1853, Benton had ordered these lands into market ; that in January, 1854, the Commissioners of General Land Office advised him that the approval of the 12,813.51 acres had been revoked, and the lands confirmed to the State under De Moine River grant ; that about 5000 acres of the lands had been sold to actual settlers ; and recommended that measures for their relief be adopted."

23. On the 2d day of April, 1860, the General Assembly of the State passed an Act for the relief of said settlers, entitled

"an Act making provisions for the settlement of all liabilities of the State, growing out of *the sale of certain lands of the Des Moines River improvement grant*," as "school lands," the Act acknowledges the sale to the De Moine Company, and provides for payment of purchasers under Tolman.

24 March 2, 1861, Congress passed the "joint resolution to quiet title, to lands in the State of Iowa," and on the 12th of July, 1862, the Act extending the Des Moines River grant, entitled "an Act confirming a land claim in the State of Iowa, and for other purposes," both of which recognize and confirm the title of the State, under the Act of August 8, 1846.

25. March 30, 1866, the General Assembly of Iowa passed the "Act providing for the adjustment of certain land claims with the General Government," and appointing J. A. Harvey, Commissioner.

26. May, 1866, adjustment by Harvey with the General Government, by which the 12,813.51 acres were charged to the State as part of the 500,000 acre grant.

27. June 20, 1865, adjustment of State with Des Moines Valley Railroad Company, of the grant to the Company.

28. 1868, March 31st, General Assembly of Iowa approved of such settlement, and of the Harvey adjustment.

29. March 3, 1871, Congress passed an Act ratifying the Harvey settlement.

30. Of the 12,813.51 acres, John Tolman, School Fund Commissioner of Webster County, sold in Webster and Hamilton Counties 3,394.80 acres.

31. The whole number of acres selected and approved under the 500,000 acre grant down to September 12, 1854, was 523,337.42 acres exclusive of the 12,813.51 acres.

32. The excess of lands selected and approved under the said 500,000 acre grant, at date of the Harvey settlement, was 35,473.54.

33. March 12, 1874, the General Assembly of Iowa passed an Act authorizing the State to intervene in cases involving title to the School Lands. Upon these facts the question is, which of these titles shall prevail; The court below held that ours was the superior title, and respondent appeals; The duty is ours to show, as we think is plain without doubt, that the decree below is right.

ARGUMENT.

One matter apparently much relied upon by appellant, and yet somewhat preliminary as we view the case, may first receive attention.

Can a junior patentee maintain an action to cancel a prior patent, when the State in making the first, violated its trust —or can a title made under either be impeached by a private citizen? The inquiry (for we give it as appellant claims it) assumes a great deal more, and a very different state of case, than is presented in this record, and yet is not difficult to answer.

The State never had any title, nor any trust to execute, to or touching this land save as it was derived under the Act of August 8, 1846, and Acts supplementary thereto. It is a misuse of language to speak of the State having "violated its trust." It is not as though having the technical legal title it had the option to devote the proceeds of a sale to one purpose or another, or to sell to one person or another. Nor is it a case where, having a title by two muniments or grants, it might at its will treat either as valid, cutting off all possible rights or equities under the other. The assumption, therefore, that the State merely violated a trust — a trust which

might be controlled by the General Government but not questioned by the citizen — begs in effect the whole question. Not only so, but why may not a private citizen having or claiming the paramount title to land to which there is a prior outstanding patent, issued by mistake or fraud, or without authority, question the validity of such patent? If not, why not?

If this land by any possible construction was included in or covered by the Act of 1841, the transaction could not be treated as a *sale*, or a case where it was *purchased* and *paid for* by the State. It was a simple *donation*, not a grant *in presenti*, and did not pass the fee. No one will doubt, therefore, that if by the ministerial act of the Commissioner of the General Land Office, or his subordinates, this land has been improperly or by mistake certified to the State or to an individual it would be entirely competent to recall such certificate. (On this subject see *Doswell vs. De Da Large*, 20 How., 29; *Bell vs. Heacott*, 19 ib., 252; *Nelson vs. Moon*, 3 McLean, 319.) Thus if it had been previously sold, or if it had been reserved from sale, a certificate or patent issued under such circumstances could be recalled and cancelled. (*Carroll vs. Safford*, 3 How., 460; *Stoddard vs. Chambers*, 2 ib., 285.) And where a certificate or patent has or has not been recalled by the executive or ministerial department of the Government, where can a party contesting the claim of one under such title (obtained by fraud, mistake or where there was a want of power) so appropriately go as to the courts of the land to have tested the validity of such title or declared paramount his own claim? This right was recognized in *Arnold vs. Grimes*, 2 Iowa, 1. And this is just where he should go—*Bagnell vs. Broderick*, 13 Pet., 450.

This is not a case, by any possibility, where there was a sale by the State (having the right to sell) to Wolsey for a purpose not authorized by law, but one where at the time of such attempted sale there was neither the right nor the power to

sell. The sale to Wolsey was confessedly and avowedly under the claimed grant made by the Act of 1841 and none other. It was claimed as school land, as a part of the 500,000 acre grant and not otherwise. It was made by school officers under the school law. It was, therefore, as utterly void and the whole proceedings of the school officers as entirely nugatory as if they had sold a tract of land below the Raccoon Fork after it was selected, set apart and patented to the State for the improvement of the River under the Act of August 8, 1846. The State had no power to sell it in this way, nor in any way under the claimed school grant. It was a *mistake* to certify the land or to make the sale or issue the patent. It was more, for it was an attempt by the State to give title to that which it did not own and which it had no right to sell. If the thing granted is not in the grantor no right passes, and this is as true of the State when it has no title at the time of the grant as of an individual.

Polk vs. Hendell, 5 Wheat., 293.
Rice vs. Railroad Co., 1 Black., 358.
New Orleans vs. U. S., 10 Pet., 662.

Most clearly, therefore, any one who finds that this attempted grant or conveyance is a cloud upon his title may proceed in equity to have the same removed.

II.

Several other matters may be adverted to here before coming to the very marrow of this whole case. We shall aim to dispose of them, as well as the main points, with the utmost brevity.

[a] The Act of 1841 provided that Iowa (a State *after* that time admitted into the Union) should have so much land, including "such quantity as may have been granted to it while under a Territorial government as shall make 500,000 acres."

It abundantly appears that the Iowa Territorial government had received, prior to its admission, largely more than this maximum amount. We submit, therefore, at the very threshold of the inquiry, that the State, upon this ground, had no right to select the lands, of which that in dispute is a part, under this Act and that it could convey no title thereunder to appellant.

[b] Not only so, but the record shows that aside from the 12,813.51 acres attempted to be selected in Webster and Hamilton counties (of which the tract in dispute forms a part), the State had already selected for *school purposes*, under the Act of 1841, more than 500,000 acres, and therefore it had no right to this land and could convey no title to Wolsey.

[c] Why is not the State estopped — and all persons claiming under it also—from setting up any claim to these lands? On this subject we do no more than refer: *First.* To the Act of the General Assembly of the State, January 25, 1855, entitled "An Act for the relief of settlers on certain river lands," and which it will be seen recognized the title of the Railroad and Navigation Company under the Act of 1846 to the lands sold by the school officers. *Second.* The joint resolution of the same Assembly, of March 22, 1858, containing proposals for settlement with said company, and which recognizes the title of such company to these lands, and which proposals were accepted by the company April 15, 1858, and following which the State patented these lands to the company immediately thereafter, to-wit: May 3 and 18, 1858. *Third.* The Act of April 2, 1860, entitled "An Act making provision for the settlement of all liabilities of the State growing out of the sale of certain lands of the Des Moines River improvement grant as school lands." This Act refers to these same lands, acknowledges their sale to the company, and provides for the payment to the purchasers from the school officers. (This Act was inspired by the message of the Governor of the State delivered in January of that year.)

III.

We however leave all these matters, insisting at the same time upon their conclusiveness as against respondent's title, and come to considerations which doubtless more immediately concerned the case in the opinion of the court below, and which must, as we believe, finally and forever settle this long protracted, and most unhappy or unfortunate litigation.

And here fortunately but little if anything remains to be decided; this court is quite familiar of course with the following cases:

Wolcott vs. Des M. Nav. & R. R. Co. *Burr vs. Des M. Nav. & R. R. Co.*	5 Wal., 681.
Baker v. Williams. *Cedar Rapids & Miss. R. R. Co. vs. Des M. Nav. & R. R. Co.,*	17 ib. 144.
Iowa Homestead Co. vs. Des M. Nav. & R. R. Co.	ib. 153.
Crilley vs. Burrows.	ib. 167.
Welles vs. Riley,	Not reported.

And when we remark that these cases settle, and settle most conclusively, every point raised in this, save the attempt to take it out of their operation by reason of the provisons of the Act of 1841, it will be seen that in fact but little remains for decision. In one of these cases, (*17 Wall 153*), the court said: "It is therefore no longer an open question that neither the State of Iowa, nor the Railroad Companies, for whose benefit the grant of 1856 was made, took any title by that Act, to the lands then claimed to belong to the Des Moines River grant of 1846, and that the joint resolution of 2d of March, 1861, and the Act of July 12, 1862, transferred the title from the United States and *vested it in the State of Iowa for the use of its grantees under the River grant.*"

This being so it is obvious and substantially so admitted by appellant's argument, that he has no foundation to rest upon, unless the same be found in the Act of 1841. And if those claiming under the Railroad grant Act of 1856, could not resist this or our title, neither can appellant. He has if possible even less tenable grounds upon which to stand.

Let us see if in this we are right. In as brief a manner as possible, we hope to be able to show that we are.

The State did not, and could not take any title at the time of, nor by force alone, of the act of 1841. There was no *State* to take, and there was no grant to the *territory* ; there was therefore no party to take, or capable of taking under it, until in December, 1846, and hence after the grant of August 8, of that year. The grant under the Act of 1846, on the other hand, was to the *territory* and the *future* State, and was on its face, and as has been repeatedly held, a *present* grant.

But the donation of 500,000 acres to the future State, was a mere indefinite float, and depended upon the act of the State whether it should ever become operative, or, as to what specific lands should be selected. It no more attached to these lands, or operated to give title to the future State therein, or right thereto, than it did to every other acre in the State, and respondent could therefore, thus far, as well claim these lands against one to whom the government had sold and patented the same before such selection, if the State happened to take the same as a part of the 500,000 acres of school lands, as against the appellee in this case.

The State could not in any way have even a possible right to the land until the same was *selected*, and this was (according to appellant's argument, p. 54) not until June 20, 1850, and the selection approved March 5, 1851. For turn to statutes of 1841 (8th Sec.) and it will be seen that "the *selections* were to be made in all the States within their limits respectively, *in such a manner as the Legislature thereof shall direct*, * * on any *public land*, except such as *is* or *may be reserved from*

sale by any law of Congress or proclamation of the President of the United States, which said location may be made at any time after the lands of the United States in said States respectively shall have been surveyed according to existing laws."

And now, though it were conceded that the selections when made would, for some purposes, relate back to the date of the Act, certainly it would not be claimed that this could be done to the prejudice of intervening rights. For until then it would be utterly impossible for any purchaser to know, or to have any the least notice, that such lands would ever become a part of this proposed donation.

We, however, utterly repudiate the whole doctrine that the grant could by any possibility take effect from the date of the Act, or at any time before the selection, if before the approval thereof by the proper authorities. This is well and sufficiently shown by just one thing and without saying more: The selections *were to be made* from any *public lands* "except such as *is* or *may be* reserved from sale," etc. Now, if the grant took effect at once, then why except other than land *then* reserved? If it could relate back of the selection then it could take within its capacious maw lands which *might* be ("may be") reserved. And thus it would, or might, occur that subsequent reservations would be no reservations, for this sleeping grant would cover them all the time. But this point was expressly ruled in *Foley vs. Harrison*, 15 Howard, 433, and it need not be further elaborated. Judge McLean, in that case (commenting upon this very section 8 of the Act of 1841), said: The words of the Act are that there *shall be granted* to each State, not that there is *hereby* granted. The words import that a grant shall be made *in the future*. (*Lessieur vs. Price*, 12 Pet., 95.)

But that the former decisions of this Court touching this very grant conclude this case a very brief reference to them will sufficiently show. In those cases the controversy was between the River Company, so-called, and those claiming

under the Railroad Grant Act of 1856. This Act (of 1856) provided:

"That *there be* and *is hereby* granted to the State of Iowa for the purpose of aiding, etc., * * every alternate section of land, designated by odd numbers for six sections in width on each side of each of said roads."

This granting clause or section, however, contained the following proviso:

"That any and all lands heretofore reserved to the United States by any Act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this Act," etc.

Here it will be seen this grant was in the present to these railroad companies, for the language is "*There be and is hereby granted*," etc.

In construing this language in connection with the Act of 1846, and Acts supplementary thereto, it was held, as already shown, that these lands had been reserved from sale by competent authority, and that they were not therefore in the grant of 1856. The Wolcott case (5 Wall., 681) very fully sets out the whole history of this legislation and the action of the Departments, and shows beyond all question that the reservation had taken effect under this Act of 1846 aided by or in connection with the Acts of the Departments and the Joint Resolution of March 2, 1861, and the Act of July 12, 1862, to which we have before referred. And this holding is affirmed and re-affirmed in *Williams vs. Baker* and *Cedar Rapids R. R. Co. vs. Des Moines Nav. Co.*, 17 Wall., 144.

We might quote at length from these and other cases giving a construction to these Acts, but they are so recent and so familiar to this Court that we should trespass upon its time and unnecessarily extend this argument to do so.

Now, the Act of 1841, under which appellant claims, provided, as we have seen, that there "shall be granted to each

State * * * * 500,000 acres * * * * to be located * * * * on any *public lands* except such as *is* or may be *reserved* from sale *by any law of Congress* or *proclamation of the President of the United States.*"

We maintain that as to the grant or claim under the Act of 1841, these lands, including that in dispute, were not "public lands," and that they were also so *reserved* as to bring them within the exception. If in either of these propositions we are sustained by the Court, and though the Court rule against us in everything else, this decree must be affirmed.

This Court held in *Williams vs. Baker, supra*, that by the Joint Resolution of 1861 and the Act of 1862 the State of Iowa *did receive the title for the use of those to whom she had sold them as a part of the original Des Moines River grant*, (and see what we have quoted above from the case in 17 Wall., 153).

How is it possible that any right attached under the Act of 1841 as against the reservation and the effect of this legislation? For it must be borne in mind and will be seen that these cases hold that the land was *reserved* by the United States authorities *as early as 1849*, and as a consequence neither the officers of the Government, nor of the State, could by any act or conveyance pass any title as against such reservation. The sale to the Navigation Company under the Act of 1846, supplemented and confirmed by the subsequent legislation of 1861 and 1862, passed the title to the company under the reservation and to its grantees. And now as these lands were not *selected*, according to the evidence, under the Act of 1841 until in 1850, and were not confirmed and certified as such until in 1851, it is clear that it was an attempt—an attempt without authority and in the face of the legislation of Congress and the decisions of this Court—to select these lands which had been "reserved from sale by Congressional legislation and due proclamation." The Acts of 1841 and 1856 are in this respect in substance the same A construc-

tion of one is the construction of the other. And whether the Act of 1846 did or did not extend the grant above the Raccoon Fork can make no difference since there was in fact a *reservation* of these lands—which *reservation* continued and was in force at the time of the attempted selection under the Act of 1841, and since, too, as shown by the repeated decisions of this Court, and as is clear upon principle, the subsequent legislation validated and confirmed the grant to the extent claimed by the State, and made valid, if this was necessary, the proclaimed and continuing reservation.

The Wolcott and Riley cases hold the reservation extended above the Raccoon Fork and that this embraced and covered all the lands in the odd numbered sections to the north line of the State, and that, too, as against the grant of 1856, and notwithstanding, too, the former decision (23 How. 66) that by the terms of the grant of 1846 it only extended to and not beyond the City of Des Moines on the Raccoon Fork. And how little of appellant's case is left and how amply fortified are we when it is remembered that selections made and patents based thereon for lands covered by a reservation, and while such reservation is in force, are void and are in no manner validated by the removal of the bar created or imposed by such reservation, or the restitution of said lands to market. (*Easton vs. Salisbury*, 21 How., 426.) Of course the case would be much stronger where the reservation continued—in no manner recalled or set aside—and was validated and recognized by the after solemn legislation of Congress and the acts of the executive and judicial departments of the State and Federal Governments.

The Act of 1841 left the land system of the United States in full operation. It did not separate these lands (500,000 acres) from the other public lands; did not convey nor purport to convey the fee nor any other than the most contingent interest in any lands whatever. The title remained in the United States, and they thus remained public lands until they

were granted by the Act of 1846, and thus under that Act and the departmental acts following (and which we need not again repeat), they were reserved and were no longer a part of the public domain.

And now how these lands could be treated as *reserved* and *public lands* at the same time within the meaning of the Act of 1841 is something that appellant's counsel in his most elaborate brief (its excellence consisting not a little, by the way, in copious extracts from former arguments of other counsel than the writer of this opposed to him in the construction of these grants), we say, is something which he has not attempted to explain. Indeed, we imagine it would take much more time than he has given, and the logic of one of even more ability than he possesses, to perform this most difficult and illogical feat. And yet they must have been *public lands* at the time of their attempted selection under the Act of 1841 by the very terms of that Act, else there was no power to select them. For, as we may repeat again, that Act only gave the right to select from "public lands" and such as were unreserved.

But perhaps in view of the point made in this connection by appellant, we assume or take for granted too much when we treat these lands as *reserved*. Let us see.

We here bring the language of the several statutes on this subject in juxtaposition.

Act of September 4, 1841, Sec. 8, "Located * * * on any public land except such as is or may be reserved from sale by any law of Congress *or proclamation of the President of the United States*."

Same Act, Sec. 10 (giving pre-emption rights), "no lands included in any reservation by any *treaty*, *law* or *proclamation of the President of the United States*, or reserved for salines or *for other purposes*, * * * * shall be liable to entry under or by virtue of the provisions of this Act."

Act of May 15, 1856, "Provided, that any and all lands heretofore reserved to the United States by any Act of Congress,

or *in any other manner by competent authority*, * * * * be and the same are hereby reserved to the United States from the operation of this Act."

Appellant concedes (see argument, page 14, *et seq.*) that this court decided in the Wolcott case, (15 Wall, 681) that these lands were reserved by *competent authority* within the meaning of the proviso last quoted, contained in the Act of May 15, 1856, known as the Railroad grant Act.

So too it is admitted, (argument p. 14.) that in the *Welles vs. Riley* case, this court decided that the reservation of the lands under the Act of August 8, 1846, was so complete, or of such a character, as to take the lands out of the *pre-emption* clause, or the right to pre-empt within the meaning of Sec. 10, above quoted, (and the same we may remark, was the holding in the *Crilley vs. Burrows* case).

It is also *conceded* that the *reservation existed at the time the land was selected under the Act of 1841*, or that under which appellant claims, (argument p. 15,) and again (p. 20,) it is said: "We make no question that the reservation, such as it was, was anterior to the selection under which we claim."

And yet it is insisted that notwithstanding the *reservation* it was still *public land*. If that is not a difficult proposition to maintain, in view of these admissions, and the repeated decisions of this court, there never was one. It is said in appellant's argument that "this was *public land* is not questioned," (by us,) We beg pardon ; it is questioned and always has been.

But what is the argument to show that these were *public lands*, and not properly reserved at the time of their selection for school purposes? In substance this : that they were not reserved by any *law of congress* nor by *proclamation of the President of the United States ;* and the attempt is made to distinguish this from the cases heretofore decided, and giving a construction to the Act of 1856, and the 10th section of

the Act of 1841. The argument, as we understand it, gathered from many pages of print, is, that the latter Act (Sec. 10), uses the language "reserved for *other purposes*," and the former speaks of the reservation being made "in any other manner by *competent authority*, while the Act of 1841, Sec. 8, gives the right to select from any public lands, "except such as may be reserved from sale by any *law of congress or proclamation of the President of the United States*." How the words "for other purposes" in the 10th section of the act of 1841, can at all affect the argument, is to us a little difficult to see. For the reservation for *whatever purpose* must be by some *competent authority*, some power either of law or administrative competent to make it. By some statutes, and there are many of them—land either by specific numbers, or by descriptive qualities, (as that they are saline, or mineral, or the like,) have been reserved, as it is termed, "by law or Act of Congress." In other cases provision has been made for reservations, not by the statute itself setting them apart, but by the act of some officer, or officers. And yet we repeat for *whatever purpose*, there must be authority; and the *purpose* whatever it may be, cannot enlarge, change, or modify the power, or its exercise, nor enter as an element, or factor into the question, whether there has or has not been a valid setting apart, or reservation. And hence the words "for other purposes" in the 10th section of the Act of 1841, which were construed and fully under review, in the cases cited (*Welles vs. Riley* and *Crilley vs. Burrows*,) can in no manner distinguish these cases from that at bar.

Not only so, but it will be seen that under this section there were but *three* methods of making the reservation, whatever the purpose, to-wit: *treaty, law or proclamation.* There is no pretense that there was a reservation by *treaty.* If as to pre-emption rights, there was a reservation by *law*, so there was as to our case, or as applied to our rights, and the decisions, to which we have referred, become conclusive even ac-

cording to appellant's argument. But if the reservation was not by either of these, then but one remains, and that is by *proclamation* We are therefore shut up to this logical result; that as this court in the cases cited, (*Welles vs. Rilley* and *Crilley vs. Burrows*) held that these lands *had been* reserved from the right of settlement or pre-emption as public lands, they must have done so because they had been reserved by "proclamation," within the meaning of that section, and without reference to the question of the *purpose* of such reservation, and if there was found in that case to have been a sufficient proclamation, so there must be in this, for the language is the same. From this there is no escape, and that the reservation must have been made, whatever the purpose, in one of these *three* methods, is clear enough; if not why the necessity of speaking of *treaty*, *law*, or *proclamation?* why not have said that no lands should be liable to pre-emption under the Act, if reserved (without reference to the manner of reservation,) for *any purpose* or for "salines or for other purposes." But the methods are there, and this court has said that these lands were so reserved—not by *treaty*, and not by *law*, (or if the latter then we are content), but by *proclamation* as to *pre-emption*, and if so, as to pre-emption, then necessarily so as to the *school selections*, for the proclamation in both cases is to be that of the President. Appellant therefore, is just where the attempted pre-emptors were in the cases cited.

But more: while it is conceded that this court has held that there was a reservation of these lands, by competent authority, as defined by the Act of 1856, yet it is argued that it was not held that they were reserved by "*proclamation of the President*," and that without such proclamation there was no valid reservation, and hence the lands were subject to selection as school land, since as is said, there might be selected for this purpose any public land, except such as were

reserved from sale by any law of Congress, or such *Presidential proclamation.*

In the first place we say these lands were not public, for they were reserved *by law.* The grant by the Act of 1846 was for a specific purpose. The lands were of easy designation. They were shown by the maps. It was a grant *in presenti.* The proceeds were to be devoted to said "improvement." The State could not sell them "except as said improvement shall progress." When the State was admitted it took the lands "for the purpose contemplated in this Act and no other." Under that Act the lists were made and the certificates issued and these lists and certificates validated "as part of the grant by Act of Congress, approved August 8, 1846" (see Joint Resolution of 1861). The Act of 1862 (July 12) confirmed all this — all the grant "to be held and applied in accordance with the provisions of the original grant." Congress could not after the Act of 1846 have appropriated these lands to any other purpose for they had already made an appropriation of them. They were *needed to satisfy the terms of that Act or grant* and were no longer "public lands." By its force, we say, this Act appropriated or reserved these lands. It certainly did as to all lands which the Department held or decided to be within the grant. And while the lands were reserved by such decision they were so completely withdrawn or appropriated, so segregated from the public lands, as that they could not be sold nor appropriated to nor selected for anything else or any other purpose.

But they were reserved by proper proclamation. The whole departmental and legislative history touching this reservation will be found in the record, and is also very succinctly stat d in the opinion of Justice Nelson in the Wolcott case (5 Wall., 684-5-6-7). This history, as we claim, shows a reservation by Presidential proclamation within the meaning of the law, and especially in view of what has been decided, and the relative duties of the President and the several Departments

and their subordinate bureaus. That in this we are right we shall content ourselves with citing (in addition to those already referred to in the course of this argument) a few of the many pertinent cases.

The very definition of proclamation shows we are right, for Webster defines it to be "publication by authority or official notice." And what we maintain is that the acts of the Department officers are the acts of the President, and that a reservation by them is in legal effect and for all the purposes of the statute a reservation by him, and that this must be so by the very nature of their respective offices and duties. These Departments are the organs of the Executive branch of the Government, established for the purpose of facilitating its operation, so far as its duties extend. (*Lockington vs. Smith*, Pet. Cir. Ct., 466.) The reasoning in that case is fully in point.

An Act of Congress in 1830 excepted from pre-emption all lands reserved from sale by *order* of the President of the United States. The question in *Wilcox vs. Jackson*, 13 Pet., 498, was whether Fort Dearborn had been *reserved* under this Act, the order having been made by Mr. Calhoun, Secretary of War, to the Commissioner of Public Lands, and without any direct order or reference to the President. It was held that a reservation so made must be considered as made by the President within the terms of the Act. There the law was by *order* of the President. Here it is by his *proclamation*. We commend the language of Barbour, J., in that case to the especial attention of the Court. This Court holds there as we claim here that there was "an appropriation in fact and in law."

See also *Williams vs U. S.*, 1 How., 290, where it is held that the law does not require the personal and ministerial performance of duties of this character by the President under his own hand. Also *U. S. vs. Cutler*, 2 Curtis C. C., 617, and further opinion of Cushing, Attorney General (7 Ops., 453),

which reviews all or most of the authorities and fully sustains our position in this case.

We only add that the Wolcott and other cases, before cited, are fully in accord with and abundantly sustain this construction of the statute. The facts in this case show that the whole controversy was brought to the attention of the President, and that the several orders were made, if not as his ministerial or personal acts, at least by the proper and appropriate Departments—those Departments through which alone the law could speak and by which agency he alone could act. The reservation, in other words, was by his order or proclamation and all the former decisions of this Court have so treated it.

But this question and all that we claim in this case has still more recently passed under review in this high tribunal, and there of course we may safely leave it. The cases which we now cite, if by possibility we are wrong as to all the others, settle it in our opinion beyond all controversy.

In *Newhall vs. Sanger* (Oct. term, 1875), Mr. Justice Davis, referring to the prior case of the *L. L. & G. R. R. Co. vs. U. S.*, and noticed hereafter by us, says, that grants of land attach only to so much of the national domain as might be sold or otherwise disposed of, and that they do not embrace tracts reserved by competent authority for any purpose or in any manner, although no exception was made in the grants themselves. And, again, the words "public lands are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." Could anything more clearly show how utterly groundless is the claim of appellant under an attempted selection of lands which were not subject to sale nor to disposal under general laws? The dissenting opinion of his h nor, Judge Field, concurred in by Strong, J., in no manner conflicts with our view of the case at bar, since in our case at the time *the lands were selected* under the Act of 1841 they were withdrawn or reserved. There the exception was (and upon this fact the dissent is based, as we understand it)

of sections within certain limits which *at the time the line of the road was definitely fixed* had been *sold, reserved, etc.*, and as they held there had been no such reservation at the time of such location they found that the grant attached. In this case there was a reservation — undeniably so, and of course even these Justices with entire consistency would hold that the land was not *public* within the meaning of the Act. And we may add that this case for our purpose holds even more, for it goes so far as to recognize the doctrine that if the reservation for any cause had been set aside the lands would have been returned to the United States, that they would then have become public, but that the grant to the Railroad Company under which appellee claimed would not have attached to it since it was reserved *at the time such grant was claimed to have taken effect.*

Of even greater pertinency and force is the case of *Leavenworth, Lawrence & Galveston R. R. Co. vs. U. S.*, decided by this Court at the same term, (October, 1875). If one case can be decisive of another, that is of this. The opinion is remarkably full and able upon the very point we here present, and counsel on the other side have, and will, in vain attempt to break its force and conclusiveness. We shall not extend this argument by attempting to quote from it or point out its applicability to the case at bar. We are content to rest our case upon these two, and the former decisions of this court (many of them referred to and commented upon in this last and most recent case) and must be pardoned if we do not follow counsel on the other side in all their criticisms of these decisions, and the many, and as far as we can see, (and this with the utmost respect) inapplicable points made by them.

If these authorities do not settle this in our favor, and lead to the result reached by the court below, and for which we contend, further words of ours would be of little avail.

We only add one word as to the effect of the so-called Harvey settlement, quoting here largely from our argument in the court below.

In the Wolcott case it was admitted that "the State had no title at the time of the conveyance to the De Moine Company, but having an after-acquired title by the Act of Congress, it would enure to the benefit of the grantees," and thus the company's title was held to be good.

In the cases of *Williams vs. Baker*, and *The Cedar Rapids & Miss. R. R. vs. Navigation Co.*, the court distinctly affirm, as one of their conclusions, that "by the joint resolution of 1861, and Act of Congress of 1862, the State of Iowa *did* receive the title *for the use of those to whom she had sold them as part of that grant*, and for such other purposes as had become proper *under that grant*."

In the case of the *Iowa Homestead Company vs. Des Moines N. & R. R. Company* and others, the court affirmed—and said it was "no longer an open question"—that "the joint resolution of 1861, and Act of 1862, transferred the title from the United States and vested it in the State of Iowa, *for the use of its grantees under the river grant*"

The grant made by the State of Iowa to the Des Moines Company, by the joint resolution of 22d March, 1858, under which the settlement was effected, and by the patents of 3d and 18th May, 1858, in pursuance thereof—in effect *warranted* the title to the lands; for the State agreed to "*secure*" the lands mentioned to the company; and that "the company or its assignees *shall have right to all* of said lands as herein granted to them, as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever."

Under such a covenant, embraced in the joint resolution of 22d March, 1858, which was *a law* of the State, as well as in the patents which were recognized in 1860, by another law of the State as having *conveyed* said lands to *the Des Moines* Company, how can it be seriously argued that the title, when the State *did* acquire it in 1861, should not enure to make this conveyance good, but should enure to another party, to whom

the State had conveyed, only by quit claim deed, and only such interest as it had in the lands as School Lands?

The adjustment made between the State and the Land Office in 1866, could not in any manner affect the legal title to the lands which had previously been vested in the Des Moines Company and its grantees by the legislature and patents of 1858, as confirmed and made good by the congressional resolution of 1861 and Act of 1862.

The argument of the defendant as to this "adjustment" was before the Supreme Court in some of the cases already decided, and in the opinion of the court in the Iowa Homestead case it was referred to, and it was said, "The construction by these officers of the different Acts of Congress relating to the subject by which this result (the adjustment) was obtained was erroneous, as we have held in three different cases." * * * * "Whatever may have caused the adjustment, it is quite apparent that something more was needed than the action of the Land Commissioner, fortified as it was by the approval of the Secretary of the Interior, to pass a valid title to the State and its grantees."

Subsequently Congress and the State of Iowa ratified the adjustment: By which bargain the State acquired large tracts of land to which it had not previously any title. But there was no attempt, either in the adjustment or in the ratification by the contracting parties, in our absence and without our consent, to trade off, or to barter away, our rights and vested titles; and if there had been any such attempt even between sovereign States, it would have been as futile and as void in the eye of the law, and in the presence of this court, as would be any other unauthorized traffic between any two of the humblest citizens of the land.

Litchfield vs. Dubuque R. R. Co., 23 How., 66.

We submit that the title of Chapman, as shown in this case is a good title, as has been so often adjudged by this court:

That there is nothing in this case to distinguish it from the cases referred to and decided as above stated :

And that the defendants utterly fail to maintain the title on which they rely :

And that the State never took any title to the land in controversy under the Act of 4th September, 1841 ; but did acquire such title to the lands under the Act of 8th August, 1846, which has enured to the benefit of its *grantees under that grant*, and that therefore the complainant's title is perfect.

It is respectfully submitted that appellee is entitled to an affirmance of this decree.

GEO. G. WRIGHT,
OF WRIGHT, GATCH & WRIGHT,
Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879.

WILLIAM B. WOOLSEY, ET AL., *Appellants*,

vs.

RICHARD B. CHAPMAN, *Appellee*.

APPEAL FROM THE CIRCUIT COURT FOR DISTRICT OF IOWA.

APPELLEE'S BRIEF

GEO. G. WRIGHT, *for Appellee*.

P. C. KENYON, Legal Printer, Des Moines, Iowa.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879.

WILLIAM B. WOOLSEY ET AL.,
Appellants,

vs.

RICHARD B. CHAPMAN,
Appellee.

Appeal from the Circuit Court for District of Iowa.

APPELLEE'S BRIEF.

1. Appellee (the complainant in the court below) derives title to the land in controversy under a deed made Feb. 17, 1858 (Fol. 170) from the Des Moines Navigation and Railroad Company.

2. His grantors had title from the state and the state from the United States, under an act of Congress of August 8, 1846, entitled "An act granting certain lands to the territory of Iowa to aid in the improvement of the navigation of the Des Moines river in said territory" (61), and subsequent acts, as well as the legislation of the state of Iowa.

3. Respondent claims under the act of September 4, 1841, "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights" (176), and the amendment of March 2, 1849. The land in controversy was attempted to be selected under this act *in 1850*, and the approval thereof Feb. 20, 1851.

Preliminarily, appellants say their title, derived as it is from the state, cannot thus be impeached—that if the state violated its trust, a private citizen cannot be heard to question its acts.

To this we answer—

1. The state never had any trust to execute, save under the act of August 8, 1846.

2. When a patent has been issued by the state by accident, mistake, fraud or want of authority, a party in interest may be heard in the courts to question its validity.

Roswell vs. De Large, 20 How., 29.
Bell vs. Heacott, 19 How., 252.
Nelson vs. Moore, 3 McLean, 319.
Carroll vs. Safford, 3 How., 460.
Stoddard vs. Chambers, 2 Ib., 285.
Arnold vs. Grimes, 2 Iowa, 1.
Bagnell vs. Broderick, 13 Peters, 450.

As this title was not in the state under the act of 1841, no right passed by its patent to defendants, and we may be heard in the courts to settle this question.

Polk vs. Hendell, 5 Wheat., 293.
Rice vs. Railroad Co., 1 Black, 358.
New Orleans vs. United States, 10 Pet 662.

Upon the record then in whom is this title? We say the appellee, and hence that the decree should be affirmed.

1. Because, as the territory of Iowa had, before its admission as a state, *more* than the maximum amount allowed by the act of 1841 (500,000 acres), it had no right to select the land in controversy, and it acquired no title thereby.

2. Before the selection of the 12,813.51 acres in Webster and Hamilton counties (of which that in controversy is a part), the state had selected for *school purposes*, under the act

of 1841, and its amendments, more than 500,000 acres, and therefore had no right to the land and could convey no title to respondents.

5. The state and all claiming under it are estopped from setting up any title to these lands under the act of 1841. Act of state legislature, January 25, 1855 (117). Joint resolution of same, March 22, 1858 (106). Deed from the state to complainants, grantor May 3d, 1858 (134). Act of same, April 2, 1860 (153). Joint resolution of same, February 3d, 1876.

4. This court has held that, under the act of August 8, 1846, and the subsequent legislation of Congress (March 2, 1861, and July 12, 1862), the title to this land was vested in the state for *our* use, as one of the grantees, under the River grant.

Wolcott vs. Nav. & R. Co., 5 Wall., 681.
Burr vs. same, Ib.
Williams vs. Baker, 17 Wall, 144.
C. R. R. Co. vs. D. Nav. Co., Ib.
Iowa Homestead Co. vs. Nav. Co., Ib. 153.
Crilley vs. Burrows, Ib. 167.
Weels vs. Riley, not reported.

5. The state could not take, under the act of 1841, until its admission, as it was not admitted until December, 1846, and as the grant under which we claim (August 8th, 1846), was one *in presenti*, the state could not, by any selections made *after* that time under the first named grant, interfere with any part of the last grant.

6. The donation under the act of 1841 was an indefinite float, and depended upon the action of the state as to whether it would ever become operative. There could be no possible claim of right under that, until the lands were *selected*, and this was not until 1850 and 1851, and long after the right or grant under which we claim attached.

7. The attempted selection by the state under this donation act was void, and under it no right could be acquired to these lands, because, in the language of that act, they were *reserved* from sale under the act of 1846—and hence not subject to be so *selected*. The donation was in the future and not a present one.

Foley vs. Harrison, 15 Howard, 433.
Lessieur vs. Price, 12 Peters, 95, and cases last above cited.

8. The lands were not *public* at the date of the attempted selection by the state within the meaning of the act of 1841. They had been *reserved from* sale as early as 1849 under the act of 1846, and hence could not have been *public lands*, or lands subject to be selected under the act of 1841—the selection thereunder taking place in 1851.

(See cases above cited.)

9. The acts of 1841 and 1856 (Railroad grant involved in the case above cited), are in substance, the same on this question, and a construction of one is a construction of the other.

10. If these lands were *reserved*, not *public*, at the time of their selection, the state could take nothing thereby, even if it had been held *afterwards* that the reservation was unwarranted.

Eaton vs. Salisbury, 21 How., 426.

11. The act of 1841 did not separate the 500,000 acres from the other public lands, and the title remained in the United States, and they remained thus public until the passage of the act in 1846; and thereunder they were reserved —no longer a part of the public domain, and so remained at the time of the attempted selection under the act of 1841.

12. That these land were reserved under the grant of 1846 at the time of the selection. See—

Wolcott vs. D. M. & N. Co., 5 Wall., 681,
and other cases above cited.

Lockington vs. Smith, Peters, C. C., 466.
Wilcox vs. Jackson, 13 Peters, 498.
Williams vs. U. S., 1 How., 290.
U. S. vs. Cutler, 2 Curtis, C. C., 617.
7 Ops., Atty. Gena'l., 453.

13. The acts of the department officers were the acts of the president, and their orders were equivalent to his *proclamation.*

(See cases above.)

14. The donation of 1841, only attacked when the selections were made to so much of the public domain *as might be sold or disposed of by the Government*, and not to such as were *reserved for any purpose or in any manner.*

L. L. & G. R. R. Co. vs. U. S., 92 U. S., 733.
Same *vs.* same, Ib., 760.
Newhall vs. Sanger, Ib., 761.
Cholard vs. Pope, 12 Wheat., 386.

15. The act of July 12, 1862, and joint resolution of March 2, 1861—whatever doubts obtained before—made our title good from August 8, 1846, as against respondents, who are intervening claimants.

Lanfear vs. Hawley, 4 Wall., 209.
Stark vs. Stone, 6 Ib., 418.

16. Ours was a direct grant *in presenti;* theirs took effect only after a *selection* thereunder, not before that time, which was in 1850. The error of the Land Department in approving their selections weighs nothing. It was a nullity.

Litchfield vs. Dubuque Co., 23 How., 66.

17. The adjustment of 1866 (so-called Harvey settlement), *to which we were not a party*, could not in any manner effect

the legal title to lands which had vested in us, or our grantor. And that this title was perfect and had completely vested, see the cases before cited, as also the acts of Congress and the Iowa legislature.

18. The title of the state under the acts of 1861 and 1862 enured to our benefit, and our title is therefore perfect.

19. Finally, there is nothing to distinguish this from the cases heretofore decided by this court.

Defendant has failed to show any title whatever.

The state never took any title under the act of 1841.

It did take title under the act of 1846 and subsequent acts, and for our benefit as one of its grantees.

GEO. G. WRIGHT,
for Appellee.